

आयकर अपीलुीय अधलकरण, 'डी' नुयायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'D' BENCH: CHENNAI**

शुी एन.आर.एस. गणेशन, नुयायलक सदसुय एवं  
शुी रमित कुओर, लेखा सदसुय के समकुष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.149/Chny/2018**

नुधररण वरुष / **Assessment Year: 2014-15**

The Asst. Commissioner of Income  
Tax,  
Corporate Circle-3(1),  
New Block, 4<sup>th</sup> Floor,  
121, Mahatma Gandhi Road,  
Nungambakkam  
Chennai-600034

v. M/s.Transenergy Ltd.,  
No.77/2,  
Maduravoyal By Pass,  
Ayanambakkam,  
Ambattur Taluk,  
Chennai-600095

(अपीलरुथी / **Appellant**)

[**PAN: AACT 1150 D**]  
(प्रतुयरुथी / **Respondent**)

Department by  
Assessee by

: Ms.R.Anitha, JCIT  
: Mr.C.Naresh, CA

सुनवाई की तारीख / Date of Hearing

: 06.11.2019

घुषणा की तारीख / Date of Pronouncement

: 22.01.2020

**आदेश / ORDER**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by Revenue is directed against appellate order dated 23.10.2017 passed by learned Commissioner of Income Tax (Appeals)-11, Chennai (hereinafter called "the CIT(A)"), in ITA Nos.12 & 271/CIT(A)-11/2016-17 which is a common order for assessment year(s) (ay's) 2013-14 and 2014-15. We are presently concerned with ay: 2014-15 and hence consequentially restrict our discussions to ay: 2014-15. The appellate proceedings before learned CIT(A) for ay: 2014-15 had arisen

from assessment order dated 23.12.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by Revenue in memo of appeal filed with Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

*"1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.*

*2.1 The Id.CIT(A) erred in deleting the disallowance of Interest paid on trade advance Rs.34,86,845/- holding that the interest on borrowed capital for the purpose of construction of building can be disallowed on interest accrued only upto the date of completion of building or put to use of building to capitalize the same.*

*2.2 The Id. CIT(A) failed to verify the actual purpose for which trade was received and terms of repayment along with the interest, etc. The assessee company has not produced any agreement of loan between the assessee company and M/s. Brakes India Limited to prove the terms and conditions of trade advance and nature of same and payment of interest thereon.*

*2.3 The learned CIT(A) ought to have seen that the assessee itself accepts that advance received is of the nature of trade advance which will be adjusted with the sale receivables from M/s. Brakes India Limited. The CIT(A) failed to examine whether such adjustment on sale receivables have passed through the Profit and Loss Account of the assessee in order to reject the Assessing Officer's contention that the adjusted trade advance is income of the assessee company.*

*2.4 The learned CIT(A) ought to have seen that the purpose of trade advance received is to ensure the supply from the assessee company to Brakes India Limited and hence claim of interest payment is not according to the prevailing trade practices. The CIT(A) also failed to examine whether tax has been deducted at source for such payment of interest u/s 194A of the Income Tax Act, 1961.*

*3.1 The learned CIT(A) erred in deleting the disallowance of reimbursement of expenditure of Rs.67,70,805/- paid to the employees in the pay roll of M/s. Brakes India Limited holding the reimburse of expenditure does not attracts TDS provision.*

*3.2 The learned CIT(A) ought to have seen that the assessee company has received technical services from M/s. Brakes India Limited through their employees and hence the payment is of the nature of fee for technical services attracts tax deducted at source as per section 194J or u/s 194C.*

*3.3 The learned CIT(A) ought to have seen that the payment of salary to the assessee's employees is only payment of fee for technical services under garb of reimbursement of expenditure to evade the TDS payments.*

*3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT (A) may be set aside and that of the Assessing Officer be restored."*

3. Briefly stated facts of the case are that assessee is manufacture of automobile components. The AO observed from records that assessee has debited Rs.83,78,010/- under the head 'Interest Expenses'. The AO asked assessee to explain the same. The assessee submitted before AO that amounts were received from M/s.Brakes India Ltd., which were shown in books of accounts as trade advances. The AO asked assessee as to why loan is shown as trade advance and interest paid thereon. The assessee claimed that keeping in view provisions of Section 2(28A) of the 1961 Act, the interest is allowable not only in respect of money borrowed but also for debt incurred . It was submitted that these trade advances are debt incurred and there is an obligation to adjust these advances with interest thereon. The prayers were made by assessee before AO to allow these interest expenses u/s.36(1)(iii) of the Act. The AO rejected contentions of the assessee. The AO observed that the assessee has not accounted

for re-payment of principal which is an income of the assessee. The AO also observed that assessee has not grossed the amounts through P&L A/c and set off his liability which the assessee should have done. The AO also observed that trade advances are short term liability but same were used for capital purpose. It was observed by AO that amounts were not used for intended purposes and thus AO disallowed said interest expenses and added the same to income of the assessee, vide assessment order dated 23.12.2016 passed by AO u/s 143(3) of the 1961 Act.

3.2. Aggrieved by an assessment framed by AO u/s 143(3) of the 1961 Act, the assessee filed first appeal with Ld.CIT(A), who was pleased to allow said interest expenses as deduction while computing business income of the assessee . The Ld.CIT(A) observed that re-payment of principal part of trade advance or loan cannot be treated as income of the assessee until or otherwise, the re-paid amount itself is unaccounted , while the AO has not made any such case. The Ld.CIT(A) observed that said sum have been repaid from books of accounts of assessee and from known sources. The learned CIT(A) held that re-payment of principal portion cannot be termed as income. The Ld.CIT(A) also rejected contention of the AO that since trade advance were not used for intended purpose, the interest portion has to be disallowed. The learned CIT(A) observed that interest referable for acquisition of asset till the date on which said asset was put to use can only be disallowed . The Ld.CIT(A) observed that building was already put to use w.e.f. 01.04.2012. The

learned CIT(A) observed that since funds have been used for purposes of business of the assessee , no interest could be disallowed on the ground that the said funds were not used for intended purposes.

3.3. The Revenue being aggrieved has filed appeal with tribunal and the Ld.DR contended before the Bench that assessee has paid interest to its associated enterprise M/s.Brakes India Ltd.. The learned DR submitted that assessee received trade advances. It was explained by learned DR that assessee is doing job work for M/s.Brakes India Ltd., and advances were used for capital expenditure and Ld.CIT(A) has observed that capital asset was put to use w.e.f 01.04.2012. The learned DR relied upon assessment order of the AO and submitted that interest expenses be disallowed. The Ld.AR, on the other hand, submitted that assessee has paid interest to M/s.Brakes India Ltd., and said amount of trade advances were used for capital purposes and assessee has put to use the said asset being Building for business purposes effective from 01.04.2012 and thus, these interest is to be allowed as business deduction . The learned counsel for the assessee placed on record copy of audited financial statement of the assessee for financial year ended 31.03.2014 and it is shown to the Bench that said trade advances received from Brakes India Limited were reflected as long term liabilities in the audited financial statements.

3.4 .We have considered rival contentions and perused material on record. We have observed that assessee is in business of manufacturing of

automobile components. The assessee is undertaking job work for M/s.Brakes India Ltd.. The assessee received trade advance from M/s.Brakes India Ltd. and as per audited accounts, the trade advance outstanding as on 31.03.2013 was Rs. 17.15 Crs. and as on 31.03.2014, the said trade advance outstanding were to the tune of Rs.13.57 Crs. We have observed that assessee has shown said trade advances received from M/s.Brakes India Ltd., as long term liability in its audited financial statements. It is also observed that assessee is doing job work entirely for said M/s.Brakes India Ltd. . We have observed that the assessee has earned Revenue from operation to the tune of Rs. 15,76,92,179/- which consisted majorly of conversion charges being Rs. 15,76,83,679/-. The assessee has paid interest to Brakes India Limited on the trade advances to the tune of Rs. 83,78,010/- which is debited to Profit and Loss Account and claimed as business deduction while computing income of the assessee. We have also observed from assessee's balance sheet that total size of its Balance Sheet is Rs.24.38 Crs. as on 31.03.2014( Rs. 27.11 crores as on 31.03.2013), out of which Rs. 19.02 Crs. is invested in Fixed assets. As observed earlier, the trade advance outstanding as on 31.03.2013 was Rs. 17.15 Crs. and as on 31.03.2014, the said trade advance outstanding were to the tune of Rs.13.57 Crs.. Thus the major source of funding for the assessee was through these trade advances from Brakes India Limited who is assessee's associated enterprise and the

assessee is doing manufacturing of automotive components as job work entirely for Brakes India Limited and is thus can be called as captive manufacturer for said Brakes India Limited. The assessee has its own funds ( share capital and reserves and surplus) to the tune of Rs. 7.95 Crs. as on 31.03.2014 and it could be seen that major investments in fixed assets come out of these trade advances provided by Brakes India Limited. Admittedly , the assessee has utilized these trade advances received from Brakes India Limited for construction of factory Building. The assessee has claimed that said factory building was put to use on 01.04.2012. The AO has not brought on record any cogent evidence to demolish this contention of the assessee. The Revenue has not brought on record any evidence even before us to demolish this contention of the assessee that said factory building was put to use on 01.04.2012. The AO has not doubted the genuineness of the capital expenditure incurred by assessee nor there is any doubt about payment of interest on these trade advances by assessee to Brakes India Limited It is observed from audited financial statements placed before the Bench that assessee is also claiming depreciation on building. We have also carefully perused audited financial statement of the assessee and we could not find that there was any diversion of funds by assessee for non business purposes nor it is the case of the AO that diversion of funds for non business purposes has taken place. Merely because trade advances were utilized for construction of factory building could not be a reason to disallow interest expenses

once the said asset is put to use for business purposes, which is the mandate of Section 36(1)(iii) of the 1961 Act read with proviso to Section 36(1)(iii) of the 1961 Act. The Revenue has not filed any evidences to demolish the findings of learned CIT(A) in its well reasoned order and merely bald grounds/averments are raised which has no legs to stand. Under these circumstances, we are of the considered view that Ld.CIT(A) has passed well reasoned order on this issue and there is no reason for us to interfere with said well reasoned appellate order passed by learned CIT(A) on this issue of allowability of interest expenses on trade advances. Thus, we sustain and uphold well reasoned appellate order passed by Ld.CIT(A) and allow interest expenses on trade advances as business deduction while computing income of the assessee and dismiss appeal filed by Revenue on this issue. We order accordingly.

4. The second issue concerns itself with secondment charges paid by assessee to M/s.Brakes India Ltd. to the tune of Rs. 1,30,28,173/- by way of reimbursement of salaries and allowance of employees of Brakes India Limited deputed with assessee. The AO invoked provisions of Sec.40(a)(ia) of the 1961 Act and disallowed the said amount as assessee did not deducted income-tax at source on these payments made towards reimbursement of salaries and allowances of employees of Brakes India Limited on deputation with assessee company. The assessee claimed before AO that said sum was paid by assessee to M/s.Brakes India Ltd., which is in the nature of reimbursement of expenditure incurred by the



assessee. The said contention of the assessee were rejected by AO while Ld.CIT(A) was pleased to allow said expenses in first appeal filed by assessee by following judgment of Hon'ble Bombay High Court in the case of CIT v. M/s.Emerson Process Management (India) Pvt. Ltd., in ITA No.237 of 2012 dated 11.06.2014.

4.2 Aggrieved by an appellate order dated 23.10.2017 passed by learned CIT(A) , Revenue is in appeal before the tribunal. The Ld. DR submitted that assessee has claimed reimbursement of expenses by way of salary and allowances paid by assessee to M/s.Brakes India Ltd. with respect to employees of M/s.Brakes India Ltd., who were on deputation with assessee. The Ld.DR submitted that while making so called reimbursement of aforesaid expenses , the assessee did not deducted income-tax at source as is required under provisions of Chapter XVII-B of the 1961 Act. The Ld.DR submitted that these are technical services provided to assessee by employees of Brakes India Limited who were deputed by Brakes India Limited with assessee. The learned DR relied upon judgment of Hon'ble Delhi High Court in the case of M/s.Centrica India Offshore (P.) Ltd. v. CIT reported in [2014] 364 ITR 336(Delhi), which was later affirmed by Hon'ble Supreme Court in the case of Centrica India Offshore Private Limited v. CIT reported in (2014) 51 taxmann.com 386(SC) by way of dismissal of SLP. The Ld.AR, on the other hand, relied upon judgment of Hon'ble Bombay High Court in the case of CIT v. M/s.Emerson Process Management (India) Pvt. Ltd., in ITA

No.237 of 2012, dated 11.06.2014 and it was submitted that aforesaid decision of Hon'ble Delhi High Court in the case of Centrica(cited supra) is distinguishable and it was submitted that in that case payments were made to Non-Residents and DTAA was applicable.

4.3 We have considered rival contentions and perused material on record including cited case laws. We have observed that assessee is in business of manufacturing of automobile components. The assessee has set up factory for manufacturing of automobile components and doing job work for its associated enterprise M/s.Brakes India Ltd. . The assessee is entirely doing work for said concern M/s Brakes India Limited . The said M/s.Brakes India Ltd. has also given huge trade advances to assessee which were used by it for constructing factory building as we have seen in earlier paragraphs of this order. The said Brakes India Limited has also deputed its employees with assessee on deputation basis . Thus, the assessee is basically a captive manufacturer for M/s.Brakes India Ltd. Coming back, the assessee has reimbursed salaries and allowances of these employees deputed by Brakes India Limited with assessee . while reimbursing these salaries and allowances, the assessee did not deducted income-tax at source as is contemplated under provisions of Chapter XVII-B of the 1961 Act and rather it is claimed that there is no necessity of deducting income-tax at sources as these are merely reimbursement of expenses and in any case Brakes India Limited has deducted income-tax at source u/s 192 of the 1961 Act while making payments to its

employees who were on deputation with assessee. We have observed that assessee has not placed on record secondment agreement entered into by it with Brakes India Limited and its terms and conditions for deputing these employees of Brakes India Limited were not analysed by authorities below. We have also observed that authorities below have also not analyzed the nature of services rendered and functions performed by these employees who were deputed by Brakes India Limited with assessee. Under these circumstances, we are inclined to set aside and restore this issue back to the file of the AO for detailed analysis of terms and conditions of secondment agreements and also of various services and functions performed by employees who were deputed with assessee, keeping in view ratio of decision of Hon'ble Delhi High Court in the case of M/s.Centrica India Offshore (P.) Ltd.(cited supra), and also decision of Hon'ble Bombay High Court in the case of CIT v. M/s.Emerson Process Management (India) Pvt. Ltd.(cited supra). It is also observed that under similar circumstances, the tribunal has restored matter back to the file of AO for fresh adjudication with similar directions, in several cases. Reference is drawn to decision of Delhi-tribunal in the case of Canon India Private Limited reported in (2019) 103 taxmann.com 232(Delhi-trib.); Johnson Matthey Public Limited Company v. DCIT reported in (2018) 191 TTJ 1(Delhi-trib.). The assessee is directed to produce secondment agreement entered into by it with Brakes India Limited as well furnish complete details of nature of services rendered and functions performed by these employees, before the AO in set aside denovo assessment

proceedings. Needless to say that AO shall provide adequate opportunity of being heard to assessee in de novo assessment proceedings in accordance with principles of natural justice in accordance with law in denovo assessment proceedings and explanations/ evidences filed by assessee in denovo assessment proceedings shall be admitted by AO in the interest of justice. During denovo assessment proceedings, the AO shall also consider the applicability of decision of Hon'ble Delhi High Court in the case of CIT v. Ansal Land Mark Township Private Limited reported in (2015) 377 ITR 635(Del), against which SLP has been admitted by Hon'ble Supreme Court in (2016) 242 Taxman 5(SC). This ground filed by Revenue is allowed for statistical purposes. We order accordingly.

In the result, the appeal filed by the Revenue in ITA No.149/Chny/2018 for ay: 2014-15 is partly allowed for statistical purposes.

Order pronounced on the 22<sup>nd</sup> day of January, 2020 in Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(रमित कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 22<sup>nd</sup> January, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

4. आयकर आयुक्त/CIT

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF