

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, AM
&
SHRI RAVISH SOOD, JM**

**ITA No.3044/Mum/2019
(Assessment Year :2013-14)**

&

**ITA No.3045/Mum/2019
(Assessment Year :2014-15)**

M/s. MAD Studios Pvt. Ltd., 12/13/14, Unit No.2 Aarey Colony Goregaon (E) Mumbai – 400 065	Vs.	Pr.CIT-12 127, Aayakar Bhavan M.K.Road Mumbai – 400 020
PAN / GIR No.AAHCM6969N		
(Appellant)	..	(Respondent)

Assessee by	Shri Dharmesh Shah
Revenue by	Shri S.C.Tiwari
Date of Hearing	23/02/2021
Date of Pronouncement	24/05/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

ITA No.3044/Mum/2019 (A.Y.2013-14)

This appeal in ITA No.3044/Mum/2019 for A.Y.2013-14 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-12, Mumbai u/s.263 of the Act dated 06/03/2019 for the A.Y.2013-14.

2. At the outset, the Id. AR pointed out that ground No.2 raised by the assessee herein is academic in nature as relief is granted by the Id. AO to the assessee in the order giving effect to Section 263 proceedings. Hence, the said ground is hereby allowed as academic in nature.

3. The ground No.1 raised by the assessee is challenging the validity of assumption of jurisdiction by the Id. PCIT u/s.263 of the Act. The ground No.3 raised by the assessee is challenging the issue of disallowance of interest on borrowed funds on merits.

3.1. The assessee company during the A.Y.2013-14 was engaged in business of content production and related services to various studios, advertising agencies and production houses. The return of income for the A.Y.2013-14 was filed by the assessee company on 30/11/2013 declaring total loss of Rs.2,19,18,870/-. The assessment for the A.Y.2013-14 was completed u/s.143(3) of the Act by the Id. AO on 22/12/2016 determining total income at Rs.13,20,220/-. In the said assessment, depreciation on plant and machinery to the extent of Rs.2,42,70,730/- was disallowed. In the course of assessment proceedings, a reference u/s.142A of the Act was made to Id. District Valuation Officer (DVO) by the Id. AO on 31/03/2016 to estimate the fair market value of plant and machinery at MAD Studios Private Limited at 12/13/14, Unit No.2, Aarey Milk Colony, Goregaon (E), Mumbai. The Id. AO observed in the assessment order that assessee has shown cost of investment in plant and machinery at Rs.39,71,78,488/-. The Id. DVO vide its report dated 21/10/2016 estimated the cost of investment in plant and machinery in respect of the aforesaid unit of the assessee at Rs.8.26 Crores. Accordingly, the Id. AO after seeking the elaborate reply of the assessee proceeded to fix the value of plant and machinery at Rs. 8.26 Crores and correspondingly

made disallowance of depreciation to the tune of Rs.2,42,70,730/- in the assessment.

3.2. This assessment framed u/s.143(3) of the Act by the Id. AO was sought to be revised by the Id. PCIT by invoking revisionary jurisdiction u/s.263 of the Act on the ground that the Id. AO ought to have disallowed the interest expenditure on borrowed funds which was alleged to be not utilised for acquiring plant and machinery. In this regard, we find that the Id. PCIT had observed that, according to the Id. AO, the fixed assets which have been acquired by the assessee at the cost of Rs.39.71 Crores were valued by the Id. District Valuation Officer (DVO) in his report furnished u/s.142A of the Act at Rs.8.26 Crores. Accordingly, the Id. PCIT concluded that assessee had not made any investment in plant and machinery to the extent of difference of Rs.31.50 Crores and accordingly, the borrowed funds were not utilised for acquiring such plant and machinery thereon, consequent to which the interest expenditure on such borrowed funds need to be disallowed. Since this aspect has not been examined by the Id. AO while framing the assessment in the opinion of the Id. PCIT, it was concluded by the Id. PCIT that the order passed by the Id. AO is erroneous and prejudicial to the interest of the revenue and accordingly, the Id. PCIT set aside the assessment u/s 263 of the Act and directed the Id. AO to verify the said issue and decide the matter afresh.

3.3. In other words, the Id. PCIT had set aside the assessment on the ground that no enquiries were carried out by the Id. AO with regard to issue of utilisation of borrowed funds for acquiring plant and machinery and consequential disallowance of interest thereon. In this regard, the Id. AR pointed out before us that the assessee during the course of original assessment proceedings had furnished the details of loans taken during

the year, details of interest paid thereon before the Id. AO. Hence, it was pleaded that proper enquiries were indeed carried out by the Id. AO on the aspects of loans taken by the assessee and corresponding interest expenditure thereon together with its allowability as deduction. The Id. AR further pleaded before us that the disallowance of depreciation of plant and machinery was prima facie made by the Id. AO on account of the allegations made by the Id. AO that plant and machinery and other fixed assets acquired by the assessee were over valued and that the borrowed funds were allegedly used for non-business purposes. The said issue of disallowance of depreciation on the differential investment amount on plant and machinery was the subject matter of dispute before the Id. CIT(A). Hence, it was pleaded by the Id. AR that the issue of interest expenses is also connected with the primary issue of over valuation of plant and machinery which is the subject matter of dispute before the Id. CIT(A). Accordingly, it was pleaded that the same cannot be the subject matter of revision proceedings by the Id. PCIT u/s.263 of the Act.

3.4. Per contra, the Id. DR vehemently supported the order of the Id. PCIT u/s.263 of the Act by stating that the Id. AO in the original proceedings had omitted to look into the utilisation of borrowings for non-business purposes for the differential cost of investment in plant and machinery to the extent of Rs.31.50 Crores and accordingly, the interest expenditure corresponding to such non-utilisation requires to be disallowed. Hence, the Id. PCIT had rightly directed the Id. AO to verify the same afresh and decide the matter in accordance with law. He argued that no prejudice is caused to the assessee in this regard and pleaded for dismissal of the appeal of the assessee. The Id. DR also filed a written note by relying on certain case laws supporting the aspect that the Id. PCIT had validly invoked revisionary jurisdiction u/s.263 of the Act. He

also argued that the issue before the Id. CIT(A) is only on the disallowance of depreciation of plant and machinery and not on the disallowance of interest on borrowed funds. He said only the valuation of assets was the dispute before the Id. CIT(A) and corresponding depreciation amount thereon. Hence, he argued that the reliance placed by the Id. AR on Clause (c) of Explanation 1 to Section 263(1) of the Act is misplaced in the instant case.

3.5. We have heard the rival submissions and perused the materials available on record. It is not in dispute that assessee had furnished the details of loans taken during the year and corresponding interest payments made thereon before the Id. AO during the course of original assessment proceedings. But we find that the basic premise on which the Id PCIT had invoked revisionary jurisdiction is that the Id AO having alleged that the assessee had invested in plant and machinery only to the extent of Rs 8.26 crores (based on valuation report of DVO), ought to have correspondingly examined the allowability of interest expenditure on borrowed funds utilised for investment in plant and machinery. Since this was not examined by the Id AO while framing the original assessment, the order passed by the Id AO becomes erroneous in as much as it is prejudicial to the interest of the revenue. The issue pending before the Id CITA is only on the depreciation on value of plant and machinery and the issue of disallowance of interest on borrowed funds thereon was not before the Id CITA. Hence the argument advanced by the Id DR that provisions of Explanation 1 clause (c) of section 263(1) of the Act does not come into operation in the instant case, holds good and deserves to be accepted. However, we find that the Id. PCIT had presumed that the investment in plant and machinery and other assets have been made out of borrowed funds of the assessee. In this regard, we find that the Id AR

vehemently argued that the assessee was having sufficient interest free funds in its kitty to make investment in plant and machinery. However, we find that there is no finding of fact to this effect in the orders of the lower authorities. In our considered opinion, we find that this matter certainly requires factual verification and the Id AO had to give a factual finding as to whether the assessee is indeed having sufficient interest free funds which would explain the investment in plant and machinery. To this extent, the order of the Id PCIT u/s 263 of the Act stands modified as per the aforesaid directions to the Id AO to examine the availability of interest free funds with the assessee. Accordingly, the grounds raised by the assessee are partly allowed.

4. In the result appeal of the assessee for A.Y.2013-14 in ITA No.3049/Mum/2019 is partly allowed.

ITA No.3045/Mum/2019 (A.Y.2014-15)

5. This appeal in ITA No.3045/Mum/2019 for A.Y.2014-15 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-12, Mumbai u/s.263 of the Act dated 06/03/2019 for the A.Y.2014-15.

6. The facts of this appeal are that the assessee company had filed its return of income for the A.Y.2014-15 on 29/09/2014 declaring total loss of Rs.6,97,53,624/-. The assessment for the A.Y.2014-15 was completed u/s.143(3) of the Act on 28/12/2016 determining total loss at Rs.1,17,05,367/- wherein disallowance to the extent of Rs.5,80,48,253/- was made on account of depreciation on plant and machinery. This assessment was sought to be revised by the Id. PCIT by assuming

revision jurisdiction u/s.263 of the Act by treating the order of the Id. AO as erroneous and prejudicial to the interest of the revenue on the following points:-

- (a) Loan processing charges paid for a sum of Rs.26,96,639/- is to be disallowed as capital expenditure
- (b) Production expenses of Rs.6,22,88,762/- is to be disallowed u/s.40(a)(ia) of the Act for valuation of TDS provisions.
- (c) Disallowance of interest expenditure on alleged inflated value of plant and machinery on the ground that borrowed funds were utilised for non-business purpose.

7. We have heard rival submissions and perused the materials available on record. We find that the Id. AR at the time of hearing pointed out that though the assessee has raised ground No.2 as an allowable deduction, the same becomes academic in nature as the Id AO while giving effect to Section 263 proceedings, had accepted the plea of the assessee and granted deduction for the same thereon. Hence, the ground No.2 raised by the assessee is allowed by treating it as academic in nature.

8. We find that ground No.4 raised by the assessee with regard to disallowance of interest on borrowed funds had already been adjudicated by us hereinabove for A.Y.2013-14. The decision rendered thereon would apply with equal force for this assessment year also except with variance in figures.

9. We find that assessee raised ground No.3 challenging the action of the Id. PCIT in setting aside the order passed by the Id. AO as erroneous and prejudicial to the interest of the revenue on the ground that

production expenses incurred by the assessee in the sum of Rs.6,22,88,762/- had not been subjected to deduction of tax at source. We find that the Id. PCIT had directed the Id. AO to examine the applicability of provisions of Section 40(a)(ia) of the Act in respect of incurrence of production expenses in the sum of Rs.6,22,88,762/-. We find that the Id. AR had furnished the details of production expenses in pages 36-49 of the paper book filed before us. It was pointed out by the Id. AR that from the said details, it could be seen that assessee has furnished the entire details of the payees together with their PAN, service tax component, tax deducted at source, remittances of TDS thereon together with the date of payment and challan number of TDS remittance. The said statement also reveals that in respect of certain parties where payments made to the payees are below the taxable limit, the assessee has not deducted tax at source as they were below the threshold limit. It was pleaded by the Id. AR that these details were also filed before the Id. PCIT. It was also pleaded by the Id. AR that assessee has not been held to be an assessee in default u/s 201 of the Act and hence, no disallowance u/s.40(a)(ia) of the Act may be made in its hands. We find that ultimately this is a matter requiring factual verification. There is no mention as to whether these details were filed by the assessee before the Id. AO in the course of original assessment proceedings. Hence, it could be safely held that the Id. PCIT had indeed validly assumed revision jurisdiction u/s.263 of the Act in respect of this issue of production expenses vis-à-vis its TDS compliance. This is a matter requiring factual verification, hence, we hold that the Id. PCIT had rightly invoked revision jurisdiction in respect of this issue of production expenses. We find that the Id. AR had also placed on record the copy of the assessment order passed by the Id. AO dated 11/12/2019 u/s.143(3) r.w.s. 263 of the Act wherein the Id. AO had ultimately on verification of

the entire details of all the parties vis-à-vis the TDS compliance made thereon, held that the sum of Rs.3,60,000/- is required to be disallowed u/s.40(a)(ia) of the Act for payments made without deduction of tax at source. In view of these observations, we hold that the Id. PCIT had rightly assumed revision jurisdiction u/s.263 of the Act in respect of this issue of production expenses. Accordingly, the ground No.3 raised by the assessee is dismissed and ground No.1 raised by the assessee is partly allowed.

10. In the result, appeal of the assessee for A.Y 2014-15 is partly allowed.

11. In the result, both the appeals of the assessee are partly allowed.

Order pronounced on 24/05/2021 by way of proper mentioning in the notice board.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 24/05/2021

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai