

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH "D" AHMEDABAD**

Before **Shri, Pramod Kumar, Accountant Member** and
Shri Kul Bharat, Judicial Member

ITA No.2084/Ahd/2012
Assessment Year :2009-10

Swagat Infrastructure Ltd., 307-308, Sarthak Square, Nr. U.S. Pizza, S.G. Highway, Ahmedabad- 380051 [PAN No.AACCS 1351 H]	V/s.	Jt. Commissioner of Income-tax, Range-8, Ahmedabad
अपीलार्थी/Appellant	..	प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/By Appellant	Shri J.P. Shah, SR-AR
प्रत्यर्थी की ओर से/By Respondent	Shri T. Sankar, SR-DR
सुनवाई की तारीख/Date of Hearing	09-05-2013
घोषणा की तारीख/Date of Pronouncement	28-06-2013

आदेश/ORDER

PER Kul Bharat, Judicial Member:-

This appeal by the assessee is directed against the order of Commissioner of Income-tax (Appeals)-XIV, Ahmedabad ('CIT(A)' for short) dated 31-07-2012 for the assessment year (AY) 2009-10. The assessee has raised following grounds of its appeal:-

- "1. The C.I.T.(Appeal) erred in not allowing the claim of the assessee under sec.36(1)(iii) of Rs.92,17,379/-.*
- 2. The C..I.T.(Appeals) further erred in upholding the disallowance of depreciation and interest on vehicles of Rs.6,47,061/-*
- 3. The C.I.T.(Appeals) ought not to have disallowed an amount of Rs.60,000/- under sec. 40(a)(ia).*

4. The C.I.T.(Appeals) further erred in disallowing an amount of Rs.24,190/- under sec.41(1) of the Act.

5. The C.I.T.(Appeals) erred in upholding the charging of interest under sec. 234A and 234B of the Act.”

2. At the outset, ground No. 3 and 4 are not pressed by Ld. counsel for the assessee and ground No.5 is consequential. Therefore, grounds No. 3 and 4 are dismissed as not pressed and ground No.5 being consequential in nature and does not require any adjudication.

3. Briefly stated facts are that assessee is a Limited Company is engaged in the business of construction and property developers. The case of assessee was picked up for scrutiny assessment and the assessment u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') was framed vide order dated 26-12-2011 thereby the Assessing Officer (AO) made disallowances u/s. 36(1)(iii) of Rs.1,88,76,020/-, disallowance of depreciation interest on vehicle of Rs.6,47,061/-, disallowance u/s. 40(a)(ia) of Rs.60,000/-, disallowance u/s. 41(1) of the Act of Rs.24,190/-.

4. Against this, assessee preferred appeal before Ld. CIT(A) who after considering the submission of assessee partly allowed the appeal. Ld. CIT(A) while partly allowing the appeal confirmed disallowance made u/s.36(1)(iii) of the Act, confirmed disallowance on depreciation of vehicle and interest expenditure confirmed disallowance made u/s. 40(a)(ia) of the Act and partly confirmed the disallowance made u/s. 41(1) of the Act. Now, assessee is in second appeal before the Tribunal.

5. First ground relates to confirmation of disallowance of the claim of assessee of Rs.92,17,379/-. Ld. AR of the assessee, Mr. J.P. Shah vehemently argued that the disallowance as well as confirmation is not justified. He submitted that the assessee has sufficient interest free funds to make advances. He further submitted that the advances were made for the

purpose of business. He submitted that law is now well settled that if the assessee has sufficient interest free funds then it is presumed that the advances are made out of interest free funds. He placed reliance on the judgment of Hon'ble Supreme Court rendered in the case of *Munjal sales Corporation v. CIT* (2008) 298 ITR 298 (SC) as well as judgment of *Reliance Utility* and the judgment of Hon'ble Karnataka High Court rendered in the case of *CIT v. Sridev Enterprises* (1991) 192 ITR (165) (Kar). Ld. AR reiterated the submission made before the authorities below. On the contrary, Ld. SR-DR of the Revenue strongly supported the orders of authorities below. He submitted that the disallowance as well as confirmation is justified. He submitted that Assessing Officer has observed that as per assessee's own submission loan and advances of Rs.18,44,12,800/- were given for purchasing of land for future project. He submitted that once the assessee is capitalizing all the expenses indirect expenses including interest in respect of ongoing project. There is no logic in not recognizing the interest cost relating to loan and advance given for purchased of land for future project. He submitted that as per the assessee's own accounting the interest related to such loan and advances which is related to future project needs to be disallowed which may be capitalized in the future project.

6. We have heard the rival submissions, perused the materials available on record and the case law cited by Ld. AR of the assessee. It is not disputed that assessee is not having sufficient interest free funds. We find that before authorities below the assessee has submitted that closing balance of loan and advances as on 31st March 2009 was at Rs.18,45,70,483/- opening balance loan and advances as on 1st April 2008 was at Rs.18,55,36,411/-. Thus, there is a dilution of advances during the year of Rs.9,65,958/- and there is no new advance during the year. Before Ld. CIT(A) it was submitted by the assessee that interest free funds available with assessee-company as on 31st March, 2009 as per balance-sheet was at Rs.29,95,44,221/-. Thus, the advances out of total interest free funds is at Rs.61.53% only, the balance 38.43% has

remained utilized for business purposes over and above, the funds borrowed during the year. We find that the Ld. CIT(A) has observed that Assessing Officer has disallowed the interest expenses incurred by the assessee on borrowings for the business as it was noted by him that certain non-interest bearing advances have been given out of interest bearing funds. It was held by him that assessee could not prove any nexus between interest free funds and the advances. It was further observed by the AO that since the advances have been given for purchasing for land for future project, the interest related to such loan should be capitalized. Ld. CIT(A) confirmed the disallowance on the basis that the AO had given a finding that assessee could not give the fund flow position to establish its claim that advances were given from interest free funds. It did not submit the day-to-day fund flow for which the onus was on it to prove that the expenditure on interest was for the business purposes. The assessee is following the work completion method and capitalizing its interest work-in-progress the project which is completed is recognized for calculation of income and its corresponding cost adjusted against profit. The indirect expenses which includes interest expenses on borrowed funds and also get adjusted as the same were earlier capitalized in wok-in-progress. Ld. CIT(A) accepted the finding of the Assessing Officer that the assessee should capitalize the interest expenses corresponding to the amounts advances for future project on the account of that the project for which the advance has been given as each project is different and only the expenses corresponding to that project should be taken into account. He further observed that the claim of the assessee that borrowed funds were utilized for the business purposes could not be proved by as no funds flow statement was submitted before the AO. Ld. CIT(A) observed that the AO has not disputed the allowability of the interest expenses but he has held that interest expenses should be capitalized. The issue whether the expenses were to be treated as business expenses or not, which is not the issue in question. We do not find any merit into the logic given by the authorities below as both the AO as well as Ld. CIT(A) has not given a finding as to how the assessee is required to capitalize

the interest expenses. At one hand, the AO as well as Ld. CIT(A) have given a finding that non-interest bearing advances were given out of interest bearing fund and it was also observed that assessee could not prove the nexus between the interest free funds and advances. The reasoning for disallowance is self-contradictory. Therefore the facts of the present case, we are of the considered view that the disallowance made by the Assessing Officer and confirmed by Ld. CIT(A) is not justified. In view of the fact that assessee has pointed out that it has sufficient interest free fund and this is not contradicted by the authorities below even before the Tribunal no material has been placed on record suggesting that the assessee was not having interest free funds available for such advances. In view of this, and respectfully following judgment of Hon'ble Supreme Court rendered in the case of *Munjal sales Corporation* (supra) we allow this ground of assessee's appeal and direct the Assessing Officer to delete the disallowance of Rs.92,17,379/-.

7. Next ground is against the confirmation and depreciation interest on vehicle of Rs.6,47,061/-. Ld. AR of the assessee submitted that the disallowance is not justified on the ground that the vehicles were registered in the name of the Director. He submitted that the view taken by the authorities below is contrary to the ratio laid by the Hon'ble Supreme Court rendered in the case of *Mysore Minerals Ltd. v. CIT* (1999) 239 ITR 775 (SC). He submitted that the vehicles were purchased in the name of Director by the assessee-company and resolution to this effect was duly made. He submitted that the consideration of vehicle were made out of the fund interest on bank loan was also made out of the assessee-company's account. The vehicles are used for the purpose of company's business. He submitted that the authorities below disallowed the claim on flimsy ground merely on the basis that assessee-company was not the owner of the vehicles registered in the name of Director. On the contrary, Ld. DR of the Revenue strongly supported the orders of authorities below and submitted that the disallowance was not made merely on the ground that assessee was not the owner but disallowance was

also made on the basis that the assessee could not give details in support of its claim that the vehicles were utilized only for the purpose of assessee's business.

8. We have heard the rival submissions and perused the materials available on record. Before Ld. CIT(A) the contention of assessee was also that such expenditure was allowed in earlier year. The factum that such expenditure was allowed in earlier year is not contradicted by the Revenue. As per the Section 32(1) of the Act depreciation is allowable if the machinery is owned wholly and partly by the assessee, however, the Hon'ble Supreme Court has further enlarged this scope of word "own" in its judgment rendered in the case of *Mysore Minerals Ltd.* (supra), wherein the Hon'ble Apex court has held that the provisions should be so interpreted and the words used therein should be assigned such meaning as would enable the assessee to secure the benefit intended to be given by the Legislature to the assessee. It has been held that the terms "owned" "ownership" and "own" are generic terms. They have wide and also narrow connotation. The meaning would depend on the context in which the term are used. In the present case, the assessee has made submission that the cars were purchased in the name of the Director and such cars are utilized for the purposes of its business. Therefore the assessee is entitled for depreciation and the interest expenditure. We are of the considered opinion that the assessee would be entitled for the allowance depreciation as well as interest expenditure if the assessee is able to prove that the vehicles were under the dominion control of the assessee-company and were utilized for its business purpose. The contention of the assessee is that the vehicles were utilized for business purpose and the assessee-company has shown it in block of assets. We find that this contention of the assessee is not considered by the authorities below in the light of the ratio laid by Hon'ble Supreme Court rendered in the case of *Mysore Minerals Ltd.* (supra). Respectfully following the ratio laid by the Hon'ble Supreme Court in the case of *Mysore Minerals Ltd.* (supra) we allow

this ground of assessee's appeal and direct the Assessing Officer to delete the addition. This ground of assessee's appeal is allowed.

9. In the result, appeal of assessee partly allowed.

Order pronounced in Open Court on the date mentioned hereinabove at caption page.

Sd/-
(Pramod.Kumar)
(Accountant Member)
Ahmedabad,

Sd/-
(Kul Bharat)
(Judicial Member)

Sd/-
A. Mohan Alankamony (AM)

*Dkp

दिनांक:- 28/06/2013 अहमदाबाद ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी / Appellant
2. प्रत्यर्थी / Respondent
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

//True Copy//

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद ।