

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "C", अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL AT AHMEDABAD,**  
**"C" BENCH**  
**सर्वश्री एन.एस. सैनी, लेखा सदस्य एवं कुल भारत न्यायिक सदस्य, के समक्ष ।**  
**BEFORE S/SHRI N.S. SAINI, ACCOUNTANT MEMBER AND KUL BHARAT,**  
**JUDICIAL MEMBER)**

ITA No.2579/Ahd/2012  
[Asstt.Year : 2009-2010]

DCIT, Cir.8  
Ahmedabad.

बनाम/Vs. M/s.Sarjan Realities Ltd.  
Suzlon House, 5, Shrimali Society  
Navrangpura, Ahmedabad 380009.  
PAN : AAACE 3472 H

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से/ Revenue by	:	Shri J.P. Jhangid, Sr.DR
निर्धारिती की ओर से/ Assessee by	:	Shri Tushar Hemani
सुनवाई की तारीख/ Date of Hearing	:	30 <sup>th</sup> October, 2013
घोषणा की तारीख/ Date of Pronouncement	:	15.11.2013

**आदेश / ORDER**

**PER N.S. SAINI, ACCOUNTANT MEMBER:** This appeal is filed by the Revenue against the order of the CIT(A)-XIV, Ahmedabad dated 8.8.2012.

2. In ground no.1 of the appeal, the grievance of the Revenue is that the learned CIT(A) has erred in law and on facts in deleting the addition of ₹ 1,22,13,280/- made u/s.40A(2)(b) of the Act.

3. We have heard rival submissions and perused the orders of the lower authorities and material available on record. In the instant case, the AO observed that the assessee has paid interest at the rate of 10% on loan taken from Subh Reality (S) P. Ltd. of ₹ 4,54,520/-, interest of ₹ 15,59,589/- @ 10% on loan taken from Sangita V. Tanti, interest of ₹ 15,59,589/- @ 10% on loan taken from Gita T. Tanti, interest of ₹ 15,59,589/- @ 10% on loan taken from Lina J. Tanti and interest of ₹ 15,59,589/- @ 10% loan taken from Radha G. Tanti, whereas the assessee has paid interest of ₹ 14,82,181/- at the rate of 12% on the loan taken from SE Energy Park Ltd., interest of ₹ 4,51,72,603/- @ 12% on loan taken from Suzlon Inf. Service Ltd. and interest of ₹ 2,66,24,899/- @ 12% on loan taken from Suzlon Energy Ltd. Since the assessee could not furnish justification with regard to reasonableness of the interest payment at the rate of 12% to the related parties, the AO disallowed the difference amount of interest at the rate of 2% higher paid by the assessee to the related parties, and thereby made disallowance of ₹ 1,22,13,280/-.

4. On appeal before the learned CIT(A), the assessee contended that vide letter dated 26.7.2011, that the assessee had submitted before the AO that the assessee has also paid interest at the rate of 15% to Smt.Rajulben K. Goswami, whereas the interest paid to the impugned parties was at the rate of 12%, and therefore, there is no excessive or unreasonable rate of interest

paid to the impugned parties, which could attract the disallowance under section 40A(2)(b) of the Act. It was also submitted that in the Income Tax Act, under the provisions of section 40A(b)(iv) of the Act, interest paid at the rate of 12% to partners is allowable and interest paid in excess of 12% to the partners is not allowable. The assessee also relied on the decision of the Tribunal in the case of ACIT Vs.Raj Steel Industries, in ITA No.2245/Ahd/2010 and in the case of Vipul Y. Mehta Vs. ACIT, ITA No.869/Ahd/2010 wherein the Tribunal had accepted payment of interest at the rate of 18% to 24% as reasonable and not excessive. Therefore, it was pleaded that the addition made was required to be deleted.

5. The learned CIT(A) after considering the submissions made by the assessee found force in the submission of the assessee that the interest at the rate of 12% was also taken as reasonable in the Income Tax Act under the provisions of section 40A(b)(iv) for the purpose of calculating interest to the partners. The CIT(A) also followed the decision of the Tribunal in the case of ACIT Vs. M/s.Raj Steel Industries and Vipul Y. Mehta Vs. ACIT (supra) where the rate of interest at 18% to 24% was considered to be reasonable and deleted the disallowance of ₹ 1,22,13,280/-.

6. Before us, the learned DR relied on the order of the AO, whereas the learned AR of the assessee fully justified the order of the CIT(A).

7. We find that the learned DR could not point out any specific error in the order of the learned CIT(A). We find no error in the order of the learned CIT(A) and in our considered opinion, section 40A(2)(b) empowers the AO to disallow expenditure paid to related parties only, when such payment is found in excess of the market rate. In our considered view, the learned CIT(A) was justified in holding that the rate of interest of 12% cannot be said to be unreasonable or excessive keeping in view the market rate and the rate of interest prescribed under the Income Tax Act itself. We, therefore, confirm the order of the learned CIT(A) and dismiss the ground of the appeal of the Revenue.

8. In ground no.2, the grievance of the Revenue is that the ld.CIT(A) has erred in law and on facts in deleting the disallowance of depreciation of ₹19,02,138/- made on Met Masts.

9. We have heard rival submissions and perused the orders of the lower authorities and material available on record. In the instant case, the AO observed that the assessee has installed 16 Met Masts upto the period of February, 2009. The AO accepted Met Masts commissioned upto the period February, 2009 and allowed the claim of depreciation to the assessee, but, he did not

accept the commissioning of 18 Met Masts amounting to ₹2,53,61,713/- in the month of March, 2009 and disallowed the claim of depreciation at ₹ 19,02,128/- thereon for the reasons that the assessee could produce evidence for installation, commencement and put to use in the month of March, 2009.

10. On appeal before the learned CIT(A), the assessee submitted that it was explained to the AO that plant & machinery mainly included Met Masts which is assembled in-house with component purchased. The assessee also furnished copy of the certificate of Met Masts commissioned during the year under consideration of DGM Wind Resources placed at page 89 of the paper book. The AO accepted the commissioning of the Met Masts till the period February, 2009, but, was of the view that the Met Masts amounting to ₹ 2,53,61,713/- have not been put to use in the month of March, 2009, on which the assessee has claimed depreciation of ₹19,02,128/-, and therefore, disallowed the same. It was argued that the AO had no objection and has accepted the commissioning of Met Masts upto the period February, 2009 and has also accepted the evidence placed on record to prove/establish that Met Masts have been installed and commissioned and put to use. The AO having accepted the similar kind of evidences for the installation of 16 Met Masts upto the period February, 2009 cannot disregard the same kind of evidences in the month of March, 2009 for commissioning of 18 Met Masts and disallowing the claim of depreciation thereon.

The AO cannot take contrary view merely for the reason that Met Masts was installed/commissioned and put to use in the month of March, 2009 and cause injustice to the assessee.

11. The learned CIT(A) after considering the submissions of the assessee observed that the AO has not doubted that Met Masts have in fact been installed, but has only doubted the fact that the same has been put to use in the month of March, 2009. He further observed that the assessee has furnished installation certificate from the DGM, Wind Mill Resources of the company, copy placed at page no.89 who had supervised the installation of masts. The Met Masts are constructed by the assessee by doing civil work and some erection and the same has been done by utilizing in-house resources. The cost has been worked out by the assessee by capitalizing the cost of the component utilized. The AO has not pointed out any contrary fact to show that the Met Masts were not put to use in the month of March, 2009 as claimed by the assessee, whereas, he has accepted similar evidence for the Met Masts erected upto the period of February, 2009. He, therefore, held that the action of the AO in disallowing the depreciation, on the basis of the presumption was not justified, and directed him to disallowing deprecation claimed by the assessee on Met Masts, considering the same have been put to use in the month of March, 2009.

12. The learned DR relied on the order of the AO, whereas, the learned AR of the assessee supported the order of the CIT(A). The learned counsel for the assessee has also relied on the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Shahabad Co-op. Sugar Mills Ltd., (2011) 10 taxmann.com 84 (P&H) where the Hon'ble High Court held that the assessee was entitled to free play in joints in taking a decision to install the machinery, if in its view the same was necessary for its business. If the assessee was to install such machinery on its bona fide business consideration, mere absence of proof of actual use thereof was not enough to deny the claim for depreciation. Accordingly, we do not find any ground to interfere with the finding of the Tribunal, holding that the assessee was entitled to depreciation on the machinery, as claimed.

13. We find that the no specific error in the order of the learned CIT(A) could be pointed out by the learned DR during the course of hearing. We find that the learned DR has not disputed the finding of the learned CIT(A) that put to use of 18 Met Masts in question were supported by the certificate of DGM Wind Mill Resources of the company, who supervised installation and commissioning of the Met Masts and the evidences were also filed before the AO. Further, it is observed that the Revenue could not dispute the finding of the learned CIT(A) that similar evidence produced by the assessee for met masts put to use upto February, 2009 was accepted by the AO as evidence for date of

put to use of met masts. We find that no error or discrepancy in the said certificate evidencing that 18 met masts were put to use by the assessee in the month of March, 2009 could be brought on record by the AO. In the absence of the same, we agree with the finding of the learned CIT(A) that disallowance of depreciation in respect of 18 met masts by the AO was merely on the basis of the suspicion, and therefore, not sustainable. We, therefore, confirm the order of the learned CIT(A) on this issue and dismiss the ground of the appeal of the Revenue.

14. In the result appeal of the Revenue is dismissed.

Order pronounced in Open Court on the date mentioned hereinabove.

Sd/-  
(कुल भारत /KUL BHARAT  
न्यायिक सदस्य /JUDICIAL MEMBER

Sd/-  
एन.एस. सैनी /N.S. SAINI  
लेखा सदस्य /ACCOUNTANT MEMBER

Copy of the order forwarded to:

- 1) : Appellant
- 2) : Respondent
- 3) : CIT(A)
- 4) : CIT concerned
- 5) : DR, ITAT.

BY ORDER

DR/AR, ITAT, AHMEDABAD