

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1094/Mum/2019
(Assessment Year :2013-14)**

M/s. Great White Hardware Pvt. Ltd., 1301, 13 th Floor, Peninsula Business Park Tower-B, Senapati Bapat Marg, Lower Parel (W) Mumbai – 400 013	Vs.	ACIT Circle- 7(1)(1) R.No.124, 1 st Floor Aayakar Bhavan M.K.Road, Mumbai – 400 020
PAN/GIR No.AACP1995N		
(Appellant)	..	(Respondent)

Assessee by	Shri Nitesh Joshi
Revenue by	Shri T.S. Khalsa
Date of Hearing	19/07/2021
Date of Pronouncement	02/08/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1094/Mum/2019 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-13, Mumbai in appeal No.CIT(A)-13/ACIT-7(1)(1)/03/2017-18 dated 29/10/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 16/03/2016 by the Id. Asst. Commissioner of Income Tax, Circle 7(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, the ground No.2 raised by the assessee was stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as the statement made from the Bar. Accordingly, the ground No.2 raised by the assessee is hereby dismissed as not pressed.

3. The ground No.3 raised by the assessee is general in nature and does not require any specific adjudication.

4. The ground No.1 raised by the assessee is with regard to challenging the disallowance of proportionate interest u/s.36(1)(iii) of the Act.

4.1. We have heard rival submissions and perused the materials available on record. We find that assessee is a domestic company engaged in the business of giving loans and advances for general financing, which fact is not in dispute. The return of income for the A.Y.2013-14 was filed by the assessee company on 30/09/2013 declaring total income of Rs.1,50,32,287/-. It is not in dispute that assessee has borrowed term loan from HDFC bank during F.Y.2010-11 relevant to A.Y.2011-12 and has advanced loan / intercorporate deposit (ICD) to M/s. Jogindra Exports Ltd., and M/s. Anchor Leasing Pvt. Ltd during the same year. These advances were made by the assessee in its ordinary course of business of financing. The assessee had received interest income on advances given by it and had interest paid on borrowings made by it as under:-

Particulars	A.Y. 2013-14	A.Y. 2012-13	A.Y. 2011-12
Interest received	Rs.0.75 Lakhs	Rs.4.36 Crores	Rs.1.87 Crores
Interest Paid	Rs.3.83 Crores	Rs.3.81 Crores	Rs. 1.63 Crores

4.2. The lending made by assessee to aforesaid two parties in its ordinary course of business of financing and resultant interest income derived thereon, which was sought to be set off against the interest paid on loan, was accepted to be income from business by the Id. AO in the earlier years i.e. A.Yrs. 2011-12 and A.Y.2012-13. When this fact was confronted to Id. DR, he stated that the year under consideration was the first year of scrutiny assessment for the assessee and that assessments for A.Yrs 2011-12 and 2012-13 were completed u/s.143(1) of the Act and not u/s.143(3) of the Act. For this argument, the Id. AR stated that the assessments for A.Y.2011-12 and 2012-13 were not subsequently subjected to any revision proceedings by the Id. Pr. Commissioner of Income Tax u/s.263 of the Act or subjected to any re-opening proceedings by the Id. AO u/s.147 of the Act. In view of this fact, we hold that it could be safely concluded that the transactions of lending to M/s. Jogindra Exports Ltd., and M/s. Anchor Leasing Pvt. Ltd and interest derived thereon from them by the assessee company in the ordinary course of its business of financing, stood accepted as business income by the Revenue in the past. Hence, there is no need for the Id. AO to take a divergent stand when there is no change in facts of the case and when there is no fresh development that had cropped up during the year under consideration. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang reported in 193 ITR 321.

4.3. During the year under consideration, we find that the Id. AO had sought to distinguish the stand taken by him in earlier years on the ground that interest received by the assessee was only from M/s.Anchor Leasing Pvt. Ltd., in the sum of Rs.75,37,903/- which was adjusted with interest paid on loans to the tune of Rs.3,82,84,003/- thereby resulting in the deficit of Rs.3,07,46,100/-. This deficit interest on account of Rs.3,07,46,100/- was sought to be disallowed by the Id. AO in the assessment. We find that during the year under consideration, the interest was received by the assessee company only from M/s.Anchor Leasing Pvt. Ltd., and admittedly no interest was received from M/s. Jogindra Exports Ltd., When this was confronted to the assessee, the assessee had submitted that M/s. Jogindra Exports Ltd., is engaged in the business of development of land and construction of building and was consistently paying interest on loans borrowed from the assessee till A.Y.2012-13. The copy of ledger account of the said borrower company was produced before the lower authorities. However, due to change in the construction policy and stop work notice issued by Municipal Corporation of Greater Mumbai (MCGM), the construction activity of the borrower company was stuck up and the project could not take off resulting in huge funds of the said borrower company choked up in their on-going construction project. In view of the said worst financial crisis, the borrower company (i.e. M/s. Jogindra Exports Ltd.,) chose not to pay any interest on the loan to the assessee company. In fact both the borrower company did not provide any payment of any interest in their books and claimed the same as deduction and the assessee company also did not provide any interest income receivable from the said borrower company in its books. The assessee had indeed filed copy of correspondences exchanged between borrower company and assessee company demanding for payment of interest, board resolution of assessee

company wherein the decision not to charge interest on the loan given to M/s. Jogindra Exports Ltd. was taken, copy of MCGM stop work notice, audited financial statements of borrower company etc., were duly furnished by the assessee before the lower authorities to substantiate its contentions of not charging interest on the loans / advances to M/s Jogindra Exports Ltd.,

4.4. We find that assessee being engaged in the business of leasing had admittedly given loans and ICD to M/s. Jogindra Exports Ltd., in earlier years in the ordinary course of its business. It is not in dispute that the interest income earned from M/s. Jogindra Exports Ltd., had been duly offered to tax by the assessee as business income and assessed as such by the Revenue, be it u/s.143(1) or u/s.143(3) of the Act (which is totally irrelevant). Moreover, it is not in dispute that the borrowed funds from HDFC Bank had been utilized by the assessee for advancing monies to M/s. Jogindra Exports Ltd., in the ordinary course of its business of financing. Once the borrowed funds were indeed utilized by the assessee company for the purpose of its business, the interest paid on such borrowings becomes an allowable deduction u/s.36(i)(iii) of the Act. Merely because the shareholder of the assessee company is also a shareholder of holding company of M/s. Jogindra Exports Ltd., the same would not make any difference for the recovery of the dues by the assessee company. This is one of the main allegation leveled by the Revenue on the assessee for non-recovery of dues from M/s. Jogindra Exports Ltd., and for disallowance of interest paid on loans in the hands of the assessee company on a proportionate basis. We find that the assessee had duly explained this fact before the Id. CIT(A) by stating that list of Directors extracted by the Id. AO to ascertain the key executives of M/s. Hindustan Appliances Ltd., which is holding company of M/s.

Jogindra Exports Ltd., is for F.Y.2015-16 which is much later to the year under appeal. It was submitted that Mr. Kanan H Shah was appointed as Additional Director on 26/03/2015; Mr.Mehul J Shah is merely Non-Executive Director since 16/06/1998 and does not have any role to play in day to day operations of M/s. Hindustan Appliances Ltd., It was also pointed out that no prudent business man would like to forego its income or earn less income when compared to its expenditure. These facts were not given due consideration by the Id. CIT(A). The decision of not charging interest from M/s. Jogindra Exports Ltd., during the year under consideration was made on account of commercial expediency and to protect atleast the principal portion of the dues by understanding the financial sickness of the borrower company. In any case, there is absolutely no provision in the statute to allow interest payment on loans only to the extent of interest income earned by the assessee and disallow the remaining interest portion thereon, as is case before us in the impugned appeal. We find that the facts stated by the assessee company with regard to borrower company becoming sick were not disputed by the Revenue before us. As stated earlier, once it is held that borrowings are used for the purpose of business, interest paid on such borrowing becomes an allowable deduction u/s.36(1)(iii) of the Act. We find that the Hon'ble Apex Court in the case of Veecumsees vs. CIT reported in 220 ITR 185 had an occasion to address the similar issue. The facts of that case were as under:-

“3. The assessee ran a jewellery business. It then commenced business also in the exhibition of cinematographic films. In 1961 it obtained loans for building a cinema theatre. The said theatre was built in 1962 and was run by the assessee until 31-7-1965 when it was transferred to another firm. For the years during which the assessee exhibited films in the said theatre the interest paid on the loans obtained for constructing it were allowed by the revenue as a deduction under the provisions of section 36(1)(iii) of the Income-tax Act, 1961, that is to say, as being the amount of interest paid in respect of capital borrowed for the purpose of the assessee's business. For the years in question, however, the ITO declined that

deduction on the ground that the business of exhibition of films in the said theatre was no longer in existence; therefore, the interest on borrowings attributable to this particular business could not be allowed as a deduction in computing the profits of the other business of the assessee. In appeal the AAC allowed the deduction as claimed by the assessee.”

4.5. The Hon'ble Supreme Court has held as under:-

“7. The fact that the revenue had during the years when the assessee carried on the business of cinematographic films permitted as a deduction under section 36(1)(iii) the interest on loans obtained by the assessee for the purpose of constructing the said theatre shows that at the time when the loans were obtained the said theatre was a part of the business of the assessee. It was interest on these loans, borrowed for the purpose of the business of the assessee, which was being paid in the years in question and the Tribunal was, in our view, right in concluding that such interest had to be treated as a deduction under section 36(1)(iii). The loans had been obtained for the purposes of the assessee's business. The fact that the particular part of the business for which the loans had been obtained had been transferred or closed down did not alter the fact that the loans had, when obtained, been for the purpose of the assessee's business. The test of 'same business' appropriate for set-off of carry forward losses is not appropriate here.

8. Apart from this, the Tribunal found as a fact that the business carried on by the assessee as jeweller and in running the cinema theatre, etc., was composite. In view of this finding also, the assessee was entitled to the deduction of the interest paid on the loans aforementioned under section 36(1)(iii).

9. The appeal is allowed. The judgment and order of the High Court under appeal is set aside and the questions afore-quoted are answered in the affirmative and in favour of the assessee.”

4.6. In view of our aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we hold that the Id. CIT(A) was not justified in confirming the disallowance of interest in the sum of Rs.3,07,46,100/-. We hereby direct the Id. AO to allow the same as deduction u/s.36(1)(iii) of the Act. Accordingly, the ground No.1 raised by the assessee is allowed.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced on 02/08/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai; Dated 02/08/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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