

Income Tax Act, 1961 (the Act) as well as claim of interest made u/s 36(1)(iii) of the Act.

2.1. On appeal the First Appellate Authority (F.A.A.) granted part relief. Aggrieved both the assessee as well as the Revenue are in appeal before us.

3. We first take up assessee's appeal. The only effective ground in the assessee's appeal is against the order of the Ld.CIT(A) partly upholding the disallowance of interest u/s 36(1)(iii) of the Act.

3.1. The Revenue has filed ground no.4 on the very same issue.

4. We have heard Shri K.Sampath, the Ld.Counsel for the assessee, and Shri P.Dam Kanunjna, Ld.Sr.D.R. on behalf of the Revenue.

4.1. On a careful consideration of the facts and circumstances of the case, orders of lower authorities and case laws cited, we hold as follows.

5. The A.O. at page 2 of his order has listed out the loans taken by the assessee from six companies. Out of this the loan taken from Manjula Finances Ltd. of Rs.1,78,00,000/- was an interest free loan. On page 3 the A.O. listed out the companies to which the assessee has given loans and advances. Out of the six companies, the assessee had given interest free loans to Rohit Tower Building Ltd. of Rs.1,71,00,000/- and to Jindal Systems P.Ltd. Rs.5,00,000/-. The claim of the assessee is that it has sufficient interest free funds and that these funds were given as interest free advances to these two entities and hence no disallowance can be made u/s 36(1)(iii) of the Act.

6. We find that the assessee had made elaborate submissions before the Ld.CIT(A). In our view the Ld.CIT(A) has erred in not applying the propositions laid down by Hon'ble Mumbai High Court in the case of CIT vs Reliance Utilities & Power Ltd. reported in 313 ITR 340 (Mum), to the facts

of the case. When there are sufficient interest free funds available with the assessee, the presumption should be that such funds have been given as interest free advances. The assessee has further demonstrated that it has sufficient interest free funds in the form of share capital and reserves and surplus. On these facts and circumstances, we are of the considered opinion that the disallowance should be deleted and the issue should be set aside to the file of the A.O. for verification of the claim of the assessee that it had sufficient interest free funds to make these interest free advances. The A.O. is directed to apply the ratio of the judgement of Hon'ble Bombay High Court in the case of Reliance Utilities & Power Ltd. (supra).

6.1. In the result this ground of the assessee is allowed for statistical purposes.

6.2. Ground nos. 1 and 3 are general in nature.

7. In the result the appeal of the assessee is allowed for statistical purposes.

8. Coming to the Revenue appeal, ground nos. 1, 5 and 6 are general in nature. Ground nos. 2 and 3 are on the issue of disallowance made u/s 14A of the Act. On perusal of the record, we find that the Ld.CIT(A) has applied the decision of this Bench in the case of M/s Zindal Equipment, Leasing and Consultancy Services Ltd. vs. ACIT in ITA 4222/Del/2012 as well the judgement of Jurisdictional High Court in the case of CIT Vs Maxopp Investment Ltd.: 347 ITR 272 and deleted the disallowance.

8.1. The Ld.D.R. could not point out any infirmity in this decision of the Ld.CIT(A). In the result these grounds of the Revenue are dismissed.

8.2. Ground no.4 is against the partial deletion of interest disallowance made by the A.O. u/s 36(1)(iii) of the Act. In view of our decision in

assessee's appeal, we set aside the matter to the file of the A.O. for fresh adjudication in accordance with law.

9. In the result Revenue's appeal is partly allowed.

10. In the result the appeal of the Revenue is partly allowed and the appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 11th May, 2016.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 11th May, 2016

***manga**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR;
- 6.Guard File

By Order

Asst. Registrar