

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 2256/KOL/ 2013
Assessment Year: 2004-2005**

**Assistant Commissioner of Income Tax,.....Appellant
Circle-54, Kolkata,
3, Government Place (West),
2nd Floor,
Kolkata-700 001**

-Vs.-

**M/s. Lovelock & Lewes,.....Respondent
Plot-Y/14, Block-EP, Sector-V,
Salt Lake Electronics Complex,
Kolkata-700 091
[PAN : AABFL 5878 A]**

Appearances by:

*Shri Amitabha Chowdhury, JCIT, Sr. D.R., for the Department
Shri K.M. Gupta, Shri B.K. Jain, Ms. Neha Bansal, A.Rs., for the assessee*

Date of concluding the hearing : June 14, 2016

Date of pronouncing the order : June 17, 2016

O R D E R

Per Shri P.M. Jagtap :-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-XXXVI, Kolkata dated 19.06.2013 and in the solitary ground raised therein, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the disallowance of Rs.76,96,794/- made by the Assessing Officer on account of interest.

2. The assessee in the present case is a partnership firm of Chartered Accountants. The return of income for the year under consideration was filed by it on 31.10.2004 declaring total income of Rs.13,18,52,040/-. In the Profit & Loss Account filed along with the said return, a sum of Rs.1,01,77,450/- was debited by the assessee on account of interest

expenditure. During the course of assessment proceedings, the claim of the assessee for the deduction on account of interest was examined by the Assessing Officer and on such examination he found that the assessee during the year under consideration had given substantial loans/advances to its sister concerns free of interest. According to the Assessing Officer, if the assessee-firm had not given such interest-free advances to its sister concerns, it would not have acquired to pay any interest on loan. He, therefore, proposed to make a disallowance on account of interest and sought the explanation of the assessee in this regard. In reply, it was submitted by the assessee that debit balances appearing in the name of the sister concerns are in the nature of sundry debtors arising on account of sale of services, etc. and there being no diversion of borrowed funds for giving any interest-free advances for non-business purpose, there was no question of any disallowance of interest expenditure. The explanation of the assessee was not found acceptable by the Assessing Officer as he noticed from the balance-sheet of the assessee that there was a separate debit balance of Rs.3.21 crores appearing as "fees and expenses receivable". He held that it was thus a case where the money was allowed to remain by the assessee-firm with the sister concern without charging any interest on the one hand and interest bearing loans were drawn on the other hand with an intention to reduce the taxable profit. He, therefore, made a disallowance of Rs.76,96,794/- out of interest being interest paid on partners Current Account and Bank Overdraft.

3. The disallowance made by the Assessing Officer on account of interest was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made by the assessee and the material available on record, the Id. CIT(Appeals) found that a similar disallowance made on account of interest in assessee's own case for earlier years, i.e. A.Ys. 2001-02, 2002-03 and 2003-04 involving identical facts was deleted by the Tribunal. He, therefore, followed the decision rendered by the Tribunal on the similar issue in assessee's own

case for A.Ys. 2001-02, 2002-03 and 2003-04 and deleted the disallowance made by the Assessing Officer on account of interest. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the Id. representatives of both the sides, the issue involved in this appeal of the Revenue for A.Y. 2004-05 relating to the deletion by the Id. CIT(Appeals) of the disallowance made by the Assessing Officer on account of interest is squarely covered by the decision of the Tribunal rendered in assessee's own case for A.Ys. 2001-02, 2002-03 and 2003-04. The copies of the relevant orders of the Tribunal are placed on record before us and perusal of the same shows that a similar disallowance on account of interest made in assessee's own case for A.Ys. 2001-02 and 2002-03 was deleted by the Tribunal for the following reasons given in paragraphs no. 10 & 11 of its common order dated 17th January, 2007 passed in ITA Nos. 976 & 977/KOL/2006:-

"10. We have considered the rival submission made by both the sides, perused the orders of the Assessing Officer and the Id. CIT(A) and the paper book filed by the Ld. Counsel on behalf of the appellant and the various case decisions cited by both the sides, including that of the decision of the Co-ordinate Bench of Tribunal in the case of ACIT Vs. Price Water House, Ko/kata vide ITA No.1280/Ko1/2005 dated 22nd September, 2006 for the assessment year 2001-02.

10.1. We find that the Hon'ble Tribunal in the case of Price Water House (Supra) at para 24 of the order had held as under:

"24. We have heard both the parties and taken into consideration the orders of tax authorities. We have also considered the paper book filed by the Ld Counsel for the assessee and the case laws relied upon. In this case, from the facts and evidences placed on record, it is evident that out of Rs.11.62 crores, Rs.9.47 crores is opening balance and such balance includes adjustment by way of sale of services out of pocket expenses related to such sale of services, debits on account of sharing common infrastructure, recoveries

made from the group entities or other adjustments. Apart from the fact that no material has been brought on record by the Revenue that the borrowed funds were actually diverted for advancing interest-free loans to the sister concerns and, therefore, in our considered opinion, the action of Assessing Officer in disallowing the claim of interest by the assessee on borrowing funds was not justified. We, therefore, delete the same and accept the ground raised by the assessee."

11. Considering the totality of the facts of the case and following the decision of the Honble Tribunal in one of the sister concerns of the appellant and in absence of any contrary material brought on record by the revenue against such decision, we are of the considered opinion that the Ld. CIT(A) was not justified in confirming the action of the Assessing Officer in disallowing the claim of interest to the extent of Rs.35,15,097/- by the appellant on borrowed funds. The Assessing Officer is therefore directed to delete the addition".

5. The aforesaid decision of the Tribunal rendered in A.Ys. 2001-02 and 2002-03 has been subsequently followed by the Tribunal to delete a similar disallowance made on account of interest in assessee's case for A.Y. 2003-04 vide paragraph no. 5.2 of its order dated 25th January, 2008 passed in ITA No. 404/KOL/2007, which reads as under:-

"5.2. The learned counsel of the assessee submitted that no money was advanced to any of the sister concerns. The debit balance in the accounts of sister concerns is on account of the bills for the professional charges raised to them which remained outstanding. When no amount is actually paid to them, the question of diversion of interest bearing fund to those sister concerns does not arise. He further submitted that the Tribunal in the assessee's own case for assessment years 2001-02 and 2002-03 has accepted the claim of the assessee. This statement by the learned counsel at the bar has not been controverted before us by the Ld. Departmental Representative. In view of the above, respectfully the decision of the Tribunal for the said assessment years, we delete the addition of Rs.63,03,266/".

6. As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to A.Ys. 2001-02, 2002-03 and 2003-04, we respectfully follow the decision of the Coordinate Bench

of this Tribunal rendered for the said years and uphold the impugned order of the Id. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of interest.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on June 17, 2016.

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

Sd/-

(P.M. Jagtap)
Accountant Member

Kolkata, the 17th day of June, 2016

Copies to : (1) ***Assistant Commissioner of Income Tax,
Circle-54, Kolkata,
3, Government Place (West),
2nd Floor,
Kolkata-700 001***

(2) ***M/s. Lovelock & Lewes,
Plot-Y/14, Block-EP, Sector-V,
Salt Lake Electronics Complex,
Kolkata-700 091***

(3) *Commissioner of Income-tax (Appeals)-XXXVI, Kolkata*
(4) *Commissioner of Income Tax, Kolkata*
(5) *The Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.