

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 534/Del/2014
Assessment Year: 2009-10**

M/S SAMTEL GLASS LIMITED, VS. ACIT,
501, Copia Corporate Suites, CIRCLE-7(1),
District Centre-Jasola, C.R. BLDG.,
New Delhi – 110 025 NEW DELHI
(PAN: AAACS2730C)

(APPELLANT)

(RESPONDENT)

Assessee by : SH. D.C. GARG, CA
Department by : SMT. SHAVETA NAKRA DUTTA, SR. DR

ORDER

PER H.S. SIDHU, JM

The Assessee has filed the Appeal against the impugned Order dated 2.12.2013 of Ld. CIT(A)-X, New Delhi pertaining to assessment year 2009-10. The assessee has taken the following grounds:-

1. That the Ld. CIT(A), New Delhi, has erred in law as well as on facts and in circumstances of the case in upholding the disallowance of Rs. 1,60,95,995/- out of interest expenses.
2. That the Ld. CIT(A), New Delhi has erred on facts and in circumstances of case by upholding the disallowance without appreciating the complete facts.
3. That the Ld. CIT(A), New Delhi has erred in law as well as on facts and in circumstances by disregarding the verdicts of Hon'ble Jurisdictional High Court.
4. The appellant craves leave to add, amend or vary from the aforesaid grounds of appeal at or before the time of hearing.

2. The brief facts of the case are that the Return of income declaring income of Rs. 4,91,90,884/- before set off of unabsorbed depreciation for AY 2002-03 and NIL income after partial set off of unabsorbed depreciation was filed on 29.9.2009 through E-filing. The case was processed u/s. 143 (1) of the I.T. Act, 1961 and selected for scrutiny assessment through CASS. Notice under section 143(2) of the I.T. Act, 1961 was issued on 18.8.2010. Thereafter notices u/s. 142(1) of the I.T. Act alongwith the detailed questionnaire were issued from time to time. In response to statutory notices, the Assistant Manager (Finance) attended the proceedings from time to time and filed the details. AO observed that the assessee company had been given interest free advance loan to the subsidiary company, M/s Palka Investments P. Ltd.. The AO observed that the company had financial expenses of Rs. 13,01,71,430/- on account of interest to various institutions. The AO further observed that that an opportunity was provided to the assessee to explain why the interest payments made should not be disallowed in view of the interest free advances given to a sister concern. The AO has considered the reply of the assessee and has come to the conclusion that he assessee was not able to show that the interest free loan to the subsidiary company had been given out of the internal accrual and that the interest bearing funds have not been used for this purposes. The AO further observed that since the assessee is bearing interest cost @14%, to the extent of the interest free loan given to the sister concern, this amount has to be disallowed and

accordingly, an amount of Rs. 1,60,95,995/- was disallowed and income was assessed at Rs. NIL vide order dated 19.12.2011 passed u/s. 143(3) of the Act, 1961.

3. Against the aforesaid order of the AO, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 02.12.2013 has dismissed the appeal of the assessee.

4. Aggrieved with the aforesaid order, the Assessee is in appeal before the Tribunal.

5. At the time of hearing, Ld. Counsel of the assessee has filed the written Synopsis, the contents thereof read as under:-

“It is respectfully submitted before Hon'ble Bench that:

2. The appellant is a public limited company engaged in the business of manufacture and sales of glass shells and funnels used in color television picture tubes. This appeal is preferred against confirmation by the CIT(A) of the addition amounting to Rs. 1,60,95,995/- made by the Assessing Officer as notional interest on account of interest free loan given to subsidiary.

3. Briefly stated, fact of the case are that the assessee company advanced Inter Corporate Deposits (ICD) to M/s Palka Investment Pvt Ltd. and charged agreed interest on the ICD. Details of the same are given as under:

<i>Date</i>	<i>Amount Rs.</i>	<i>Rate of Intt</i>	<i>Interest Amt Rs</i>	<i>TDS Rs</i>
<i>23.06.2008</i>	<i>7,48,00,000/-</i>	<i>14%</i>	<i>3,15,594</i>	<i>58,511</i>
<i>24.06.2008</i>	<i>5,96,00,000/-</i>	<i>14%</i>	<i>2,28,602</i>	<i>46,498</i>

3. It is a matter of fact that during the year under consideration, M/s Palka Investment Pvt. Ltd. became subsidiary of the appellant company which is evident from the financial statement of the

appellant (Schedule - 5 'Investments' and copy of 'resolution' dated 18-08-2008).

4. *On becoming of its subsidiary on 04-07-2008, for business considerations, the appellant company converted its existing loan of Rs. 13,44,00,000/- to interest free loan and granted further interest free loan amounting to Rs. 3,15,00,000/- to M/s Palka Investment Pvt. Ltd. 5. It is also a matter of fact that the loans given to M/s Palka Investment Pvt Ltd. were out of internal accruals of the appellant company and in accordance with the commercial expediencies of the appellant company. As on 31-03-2009, networth (Capital plus Reserve) of the appellant company was amounting to Rs 79.82 crores as against the ICD granted to subsidiary amounting to Rs. 16.59crores.*

6. *The Assessing Officer as well as Ld. CIT(A) did not appreciate the fact that the appellant is maintaining a bank account with common funds in which all the deposits and withdrawals were made.*

7. *The learned Assessing Officer calculated notional interest on presumptions without establishing any nexus between the funds procured and given to the subsidiary company.*

8. *There is no finding in the assessment order that the funds have been used for the personal benefit of the directors.*

9. *The Hon'ble Jurisdictional High Court in the matter of CIT Vs Dalmia Cement Bharat Ltd [330 ITR 595] held that "In the absence of anything to show that the interest-free loan given by the assessee company to its subsidiary company was for personal benefit of any director or for any other personal reason, it has to be held that the loan was given for the purpose of business and commercial expediency and, therefore, no portion of the interest paid by the assessee on its borrowed funds can be disallowed on the*

ground that a portion thereof has been diverted to the subsidiary company." Copy of the decision is enclosed herewith at page no. 45 -50.

10. In another case of *CIT Vs Bharti Televenture Ltd.* [331 ITR 502] Hon'ble Jurisdictional High Court held that "Where the assessee was found to be having adequate non-interest bearing fund by way of share capital and reserves and there was no nexus between the borrowals of assessee and the advances given, no disallowance for interest was called for." Copy of the decision is enclosed herewith at page no. 51 - 56.

11. The Ld. CIT(A) distinguished above decisions relied by the assessee without appreciating the facts of the case properly.

12. Assessee's own case, in the next Assessment Year i.e in AY 2010-11, the CIT(A) has deleted the same addition vide order dated 17-02-2015. Copy of the order is attached herewith at page no. 29 - 34.

13. Hon'ble Apex Court recently in the matter of *Hero Cycles Pvt Ltd Vs CIT, Ludhiana* [Civil appeal no. 514/2008 decision delivered on 05-11-2015] while dealing with the term 'Commercial Expediency' held that Once it is established that there is nexus between the expenditure and the purpose of business, the revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and to decide how much is reasonable expenditure having regard to the circumstances of the case. Copy of the decision is attached herewith at page no 36 - 44.

14. Hon'ble Hon'ble Supreme Court in the matter of *CIT, Bombay Vs. Walchand and Co. Private Ltd* (1967) 65 ITR 381 (SC) ITA No 1249/2011 held that in applying the test of commercial expediency for determining whether an expenditure was wholly and

exclusively for business, the expenditure has to be adjudged from the point of view of the businessman and not of revenue.

It is humbly prayed that notional interest made by the AO and confirmed by the CIT(A) may kindly be deleted.”

6. On the contrary, Ld. DR relied upon the orders of the authorities below.

7. We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A), Written Synopsis. We find that the assessee is a public limited company engaged in the business of manufacture and sales of glass shells and funnels used in color television picture tubes. This appeal is preferred against confirmation by the CIT(A) of the addition amounting to Rs. 1,60,95,995/- made by the Assessing Officer as notional interest on account of interest free loan given to subsidiary. We note that the assessee company advanced Inter Corporate Deposits (ICD) to M/s Palka Investment Pvt Ltd. and charged agreed interest on the ICD. Details of the same are given as under:

Date	Amount Rs.	Rate of Intt	Interest Amt Rs	TDS Rs
23.06.2008	7,48,00,000/-	14%	3,15,594	58,511
24.06.2008	5,96,00,000/-	14%	2,28,602	46,498

7.1 We further note that during the year under consideration, M/s Palka Investment Pvt. Ltd. became subsidiary of the assessee company which is evident from the financial statement of the appellant (Schedule - 5 'Investments' and copy of 'resolution' dated 18-08-2008). On becoming of its subsidiary on 04-07-2008, for business considerations, the assessee

company converted its existing loan of Rs. 13,44,00,000/- to interest free loan and granted further interest free loan amounting to Rs. 3,15,00,000/- to M/s Palka Investment Pvt. Ltd. The loans given to M/s Palka Investment Pvt Ltd. were out of internal accruals of the assessee company and in accordance with the commercial expediencies of the assessee company. As on 31-03-2009, networth (Capital plus Reserve) of the assessee company was amounting to Rs 79.82 crores as against the ICD granted to subsidiary amounting to Rs. 16.59crores. The Assessing Officer as well as Ld. CIT(A) did not appreciate the fact that the assessee is maintaining a bank account with common funds in which all the deposits and withdrawals were made. We observe that the Assessing Officer calculated notional interest on presumptions without establishing any nexus between the funds procured and given to the subsidiary company. There is no finding in the assessment order that the funds have been used for the personal benefit of the directors.

7.2 We further find that in Assessee's own case, in the next Assessment Year i.e in AY 2010-11, the CIT(A) has deleted the same addition vide order dated 17-02-2015 by holding as under:-

“4.2 I have consider the assessment order, written submission filed by the Ld. AR of the appellant, I agree with the argument of the Ld. AR of the appellant. The interest bearing loan was converted into interest free loan on the conversion of M/s Palka Investment Pvt. Ltd. into a subsidiary of the appellant company. Loan granted to subsidiary company is to be treated as business purposes. Hence I am of the view that the Ld. AO has wrongly taken the view that interest free advances were granted to the

subsidiary company from the amount borrowed on interest. Hon'ble Delhi High Court in the case of CIT vs. Dalmia Cement Bharat Ltd. 330 ITR 595 held that "In the absence of anything to show that the interest free loan given by the assessee company to its subsidiary company was for personal benefit of any director or for any other personal reasons, it has to be held that the loan was given for the purposes of business and commercial expediency and, therefore, no portion of the interest paid by the assessee on its borrowed funds can be disallowed on the ground that a part thereof has been diverted to the subsidiary company." Respectfully following the above case law, the addition made by the AO is hereby deleted. Ground No. 4 is allowed."

7.3 We further note that again in Assessee's own case, in the Assessment Year i.e in AY 2012-13, the CIT(A) has deleted the same addition vide order dated 20-07-2016 by holding as under:-

"5. Ground no. 4 relates to disallowance of interest expenses of Rs. 2,32,26,000/- made by the AO. I find that this issue has also been decided by the then CIT(A)-8 in the appellant's own case for the AY 2010-11 in their favour. Therefore, for this year also, on the identical facts, his order is followed."

7.4 After perusing the aforesaid decisions of the Ld. CIT(A) for the assessment year 2010-11 and 2012-13, we are of the facts and circumstances of the present case are exactly similar and identical to the assessment years 2010-11 & 2012-13, hence, the addition in dispute needs to be deleted. We also find that Hon'ble Delhi High Court in the case of CIT vs. Dalmia Cement Bharat Ltd. 330 ITR 595 has held that "In the absence of anything to show that the interest free loan given by the assessee company to its subsidiary company was for personal benefit of any director or for any other personal reasons, it has to be held that the

loan was given for the purposes of business and commercial expediency and, therefore, no portion of the interest paid by the assessee on its borrowed funds can be disallowed on the ground that a part thereof has been diverted to the subsidiary company.”

7.5 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, the addition in dispute is hereby deleted and orders of the authorities below are cancelled.

8. In the result, the appeal of the Assessee is allowed.

Order pronounced in the Open Court on 03/03/2017.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 03/03/2017

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITATTRUE COPY

By Order,

ASSISTANT REGISTRAR