

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 5715/Mum/2013
(Assessment Year: 2008-09)

DCIT, Circle 3(3)
Room No. 609, 6th Floor
Aayakar Bhavan, M.K. Road
Mumbai 400020

Ms/ Videocon Industires Ltd.
171-C, Mittal Court
Vs. Nariman Point
Mumbai 400021

PAN - AABCV4012H

Appellant

Respondent

Appellant by: Shri G.M. Doss
Respondent by: Shri Shailesh S. Shaw

Date of Hearing: 25.05.2016
Date of Pronouncement: 31.05.2016

ORDER

Per Jason P. Boaz, A.M.

This appeal by the Revenue is directed against the order of the CIT(A)-7, Mumbai dated 26.04.2013 for A.Y. 2008-09.

2. The facts of the case, briefly, are as under: -

2.1 The assessee-company, engaged in the business of manufacture and trading of consumer electronics and home appliances, exploration of crude oil, gas, investment in shares, securities and properties, lease and finance and other incidental activities, filed its return for A.Y. 2008-09 on 30.09.2008 declaring total income of ₹622,26,94,667/-. The case was selected for scrutiny and the assessment was completed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 31.03.2011 wherein the income of the assessee was determined at ₹647,55,09,642/-. Subsequently, vide order under section 154 of the Act, the income of the assessee was revised to ₹588,02,16,620/-.

2.2 Subsequently, the AO, based on information received from the Investigation Wing of the Department relating to the 2G cases, initiated re-

assessment proceedings under section 147 of the Act by recording reasons for action in this regard and issued notice under section 148 of the Act to the assessee on 30.05.2012. The re-assessment was completed under section 143(3) r.w.s. 147 of the Act vide order dated 27.02.2013 wherein the income of the assessee was determined at ₹602,14,99,280/- in view of the following ands/disallowances: -

(i) Disallowance of transport expenses	₹	46,028/-
(ii) Disallowance of interest u/s. 36(1)(iii)	₹	12,87,36,636/-
(iii) Disallowance of upfront fee	₹	1,25,000/-

2.3 Aggrieved by this order of the assessment passed under section 143(3) r.w.s. 147 dated 27.02.2013 for A.Y. 2008-09 the assessee preferred an appeal before the CIT(A)-7, Mumbai. The learned CIT(A) disposed off the assessee's appeal vide the impugned order dated 26.04.2013 allowing the assessee partial relief. In the impugned order the learned CIT(A) deleted the disallowance of interest under section 36(1)(iii) of the Act amounting to ₹12,87,36,636/- and Upfront fee of ₹1,25,000/-, but upheld the validity of the re-opening of the assessment under section 147/148 of the Act.

3. Revenue, being aggrieved by the order of the CIT(A)-7, Mumbai dated 26.04.2013 for A.Y. 2007-08 has preferred this appeal raising the following grounds: -

- “1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance of Rs.12,87,36,636/- out of the interest expense claimed u/s. 36(1)(iii) of the Income Tax Act, 1961, without appreciating the fact that the interest bearing funds were given to subsidiary company as interest free deposits in guise of share application.
2. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the disallowance of Rs.1,25,000/- being upfront fees paid to Central Bank of India without appreciating the fact that the fees were paid to obtain the loan not for its own business but was given to subsidiary company without any consideration.
3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

4. *The appellant craves leave to amend or later any ground or add a new ground which may be necessary.*"

4. The **grounds at Sr. Nos. 3 & 4** being general in nature, no adjudication is called for thereon.

5. **Grounds 1 and 2:** Disallowance of Interest Expenditure claimed under section 36(1)(iii) - ₹12,87,36,636/-
Disallowance of Upfront Fee - ₹1,25,00,000/- paid to Central Bank of India

5.1 In these grounds, Revenue assails that impugned order of the learned CIT(A) as being erroneous in deleting the disallowance of ₹12,87,36,636/-, out of interest expenditure claimed, under section 36(1)(iii) of the Act without appreciating that the interest bearing funds were given to subsidiary company as interest free deposits in the guise of share application money. It was further contended that the impugned order was erroneous in view of the deletion of the disallowance of ₹1,25,00,000/- being upfront fees paid to Central Bank of India without appreciating that the fees were paid for obtaining the loan not for the assessee's own business but was given to the subsidiary company without any consideration, ostensibly for the purpose of investing in share capital of the subsidiary which was not allotted and the money returned a year later. The learned D.R. was heard and placed strong reliance on the order of the Assessing Officer (AO) on this issue in disallowing the interest paid on loan taken from Central Bank of India for the reason that the interest bearing funds were diverted for non-business purpose.

5.2 Per contra, the learned A.R. for the assessee supported the finding of the learned CIT(A) on these issues, i.e. of deletion of the disallowance of interest of ₹12,87,36,636/- under section 36(1)(iii) of the Act paid on loan of ₹500 crores taken from Central Bank of India and the upfront fee of ₹1,25,00,000/- paid by the assessee to the Bank in this regard. The learned A.R. for the assessee reiterated the submissions put forth before the learned CIT(A), vide letters dated 12.04.2013 and 17.04.2013. It was submitted that Datacom Solutions P. Ltd. [now Videocon Telecommunication Ltd. (VTL)] is a subsidiary of the assessee who held

64% of its share capital. The assessee advanced the amount of loan taken from Central Bank of India to VTL for acquiring further share capital in its subsidiary, which was in telecom business and since it was in telecom business where the valuation thereof was very high, the assessee felt it to be commercially expedient to do so. As investment in shares, securities, etc. is one of the business activities of the assessee there was commercial expediency in advancing the amount to VTL and therefore no disallowance of interest ought to have been made, since the advance was for the purposes of business. In support of the proposition that no disallowance of interest expenditure ought to be made under section 36(1)(iii) the learned D.R. of the assessee, inter alia, placed reliance on the following judicial decisions: -

- i) S.A. Builders Ltd. (288 ITR 1) (SC) - on grounds of 'commercial expediency, such expenditure is allowable.
- ii) CIT vs. Srishti Securities (P) Ltd. (2010) 321 ITR 498 (Bom) - for the reasons that if funds are borrowed by an investment company for making investment in shares for the purpose of acquiring controlling interest, such borrowed funds would be deductible.
- iii) Reliance Communications Infrastructure Ltd. (2012) 207 Taxman 219.

It was prayed that Revenue's grounds be dismissed.

5.3.1 We have heard the rival contentions and perused and carefully considered the material on record, including the judicial pronouncements cited. The facts of the matter, as emanate from the record, are that in the course of assessment proceedings, the AO noticed that the assessee had taken a term loan of ₹500 crores from Central Bank of India which it advanced on 27.12.2007 to its subsidiary Datacom Solutions P. Ltd. (now known as Videocon Telecommunications Ltd.) as share application money. The AO observing that shares were not allotted to the assessee, but the amount was refunded to the assessee on 29.12.2008, disallowed the interest of ₹12,87,36,636/- and upfront fee of ₹1,25,00,000/- paid on the said loan to Central Bank of India for the reason that interest bearing funds taken from the Bank had been diverted for non business purposes.

5.3.2 On appeal, the learned CIT(A), after considering the finding of the AO and the submissions of the assessee (reproduced at para 6.3 of the impugned order), went on to hold that the amount of ₹500 crores advanced to VTL as share application money by the assessee was for the purpose of the assessee's business and therefore the disallowance of ₹12,87,36,616/- out of interest expenditure claimed by the assessee under section 36(1)(iii) of the Act was unwarranted in the facts of the case and deleted the same. In that view of the matter, i.e. that the amount of ₹500 crores advanced as share application money by the assessee to VTL was for the purposes of the assessee's business, the learned CIT(A) held that the upfront fee of ₹1,25,00,000/- paid to Central Bank of India in respect of the loan of ₹500 crores is also to be allowed as a deduction. In paras 6.4 and 6.5 of the impugned order, the learned CIT(A) has held as under: -

“ 6.4 I have considered the A.O.'s order as well as the appellant's A/R submission. It is the submitted by the appellant that the share application money advanced was during the course of its regular business activities. The appellant had not charged any interest on these advances as there was no such contract. Hence, any interest paid on borrowings for the purpose of business activity is allowable u/s.36(1)(iii) of the Act. According to the provisions of Section 36(1)(iii) of the Act, an assessee is entitled to deduction of interest payment in respect of capital/amount borrowed for the purpose of business. The expression "purposes of business" is comprehensive enough to cover expenditure of revenue nature as well as of capital nature because both the types of expenditure can be incurred for business purposes. The ld. AO has merely stated that the share application money advanced by the appellant company to the Data Corn was for non-business purpose. However, he has not substantiated the same. He has not examined the purpose for which the share application money was advanced to Data Corn. On going through the submissions of the AR, the following points emerge:

i) VIL had an aggregate shareholding of 64% in Data Corn. VIL had given the advance by way of share application money with a view to acquire further share capital of the said subsidiary. Thus, the amount advanced to subsidiaries was for business purposes as the same are linked with the business of subsidiary in which the appellant has deep interest. Indeed, the valuation of telecom business at the relevant time was very high and hence it was commercially expedient decision to invest in that business. Indeed, 'if the subsidiary company expands and progresses, the appellant company will be benefited by the same as the valuation and net worth of the appellant will also increase.

(ii) Data Com is a subsidiary company of the appellant company. Any transaction with it will be for the purpose of the appellant's business and advance given will be for business expediency. The above transaction was approved and authorized by the Board of Directors in the normal course of business activities. Hence, the said advance towards share application money given to Data Corn is for the purpose of business and any interest paid on the funds utilized for the purpose of such business activity is allowable expenditure u/s 36(1)(iii) of the Income Tax Act, 1961.

(iii) Further, the appellant company is also engaged in the business of investment in shares, securities, properties along with other activities, which fact is also mentioned by the ld. AO in the reassessment order passed u/s. 148 of the Act. Relevant extract of the Memorandum of Association was enclosed. Therefore, interest expenditure incurred on loan taken to subscribe to shares of a company is incurred for one of the business purpose of the appellant, i.e. investment. Thus, the same cannot be treated as having been incurred for non-business purpose and disallowed. This view is also supported by the decision of Videocon International Ltd. which amalgamated with the appellant company VIL, for AY 2003-04 in ITA No. 4784/Mum/2008 wherein similar issue of disallowance of interest on share application money advanced was involved. The Hon'ble Mumbai ITAT in that case upheld the deletion of the disallowance of interest on share application money advanced on the reasoning that "the utilization of the fluids has been found to be in accordance with the objects clause in the Memorandum of Association and if that is so the interest cannot be disallowed because even if borrowed funds were used for making share application monies, the share application monies having been paid for purpose of the assessee's business, there is no diversion of borrowed funds to justify the disallowance of the interest."

(iv) VIL had an aggregate shareholding of 64% in Data Com. The foremost purpose of making the share application money to Data Com was with the intention of have controlling interest in the company for the purpose of normal business activities. Thus, it cannot be contended that the share application money made is not for business purposes. This view is supported by the decision of the Calcutta High Court in the case of CIT v. Rajeeva Lochan Kanoria [1994] 208 ITR 616 (CAL) and the decision of the Bombay High Court in the case of CIT v. Srishti Securities (P.) Ltd. [2010] 321 ITR 498 (BOM).

(v) On perusal of the above main object clause A5 it is clear that one of the main object clauses of the appellant company is to carry on, manage, supervise and control in India or abroad the business of telecommunication, telecommunication infrastructure, telecommunication systems, telecommunication networks, and telecommunication services of all kinds. The clause further authorizes the appellant company to provide and to promote & establish companies, funds, associations or partnerships or joint ventures for providing telecom networks. The clause also authorizes the appellant company to make

investments in shares/securities in such companies and/or to enter into joint venture/partnership with such companies carrying on the abovementioned activities.

Data Com is in the business of telecommunication. The appellant company has made the investment in Data Com to carry on the business of telecommunication and has thus promoted Data Com which is also in the business of telecommunication. To make investments in shares/securities in the companies and/or to enter into joint venture / partnership with the companies carrying on the business of telecommunication is one of the main objects of the appellant company. The appellant company in this case has not purchased shares of Data Com for earning dividend but to promote its business of telecommunication. Thus the investment made by the appellant company in Data Com is for furtherance of its business of telecommunication and therefore the purpose of its business. This view is also in accordance with the decision of the Bombay High Court in the case of CIT v. Reliance Communication Infrastructure Ltd. 207 Taxman 219 (Bom.), Calcutta High Court in the case of CIT v. Rajeeva Lochan Kanoria [1994] 208 ITR 616 (CAL) and the decision of the Karnataka High Court in the case of CIT v. Anand Technology Resource Park (P.) Ltd. 202 Taxman 654 (KAR).

(vi) The share application being advanced by the appellant company for the purpose of business and commercial expediency, the interest expenditure on loan taken for the said purpose is allowable as per the decision of the Supreme Court in the case of S.A. Builders, 288 ITR 1 (SC).

6.5 In view of the above discussion, I am of the considered view that the share application money advanced by the appellant company to Data Com was for the purpose of business of the appellant company. Therefore, disallowance of interest expenditure claimed by the appellant company u/s. 36(1)(iii) of the Act is unwarranted. The AO is therefore directed to delete the said disallowance. Having held that the share application money advanced to Data Com was for the purpose of business of the appellant company, the "Upfront Fee" paid to Central Bank of India on the loan taken from it is also allowable as deduction from income of the appellant. Thus, this ground of appeal is decided in favour of the appellant."

5.3.3 According to the assessee the amount of ₹500 crores advanced as share application money by the assessee to VTL was made in the course of the regular business activities, out of commercial expediency and for the 'purpose of business', which is wide enough to envelop in its gamut expenditure of both revenue and capital nature. It is seen that the AO has merely observed that the share application money advanced was for non business purpose, but in our view he has not established this contention.

The assessee is deeply linked in business with VTL and had an aggregate shareholding of 64% in VTL. Therefore the said amount advanced to VTL for investment in further share capital would be for business purposes of the assessee (which included investment in shares, securities, etc.) as well as of that the subsidiary, advanced in the normal course of its business activities and as a measure of commercial expediency. In these circumstances, since the assessee's objectives of business as per the Memorandum of Association include telecommunication business, investment in shares, securities, etc., interest expenditure incurred on loan taken to invest in shares of a subsidiary company is incurred for the business purposes of the assessee, both in investments and in furtherance of its business of telecommunication. It is further seen that the above transaction was undisputedly approved/authorized by the Board of Directors of the assessee-company in the normal course of its activities and consequently the share application money advanced to VTL is clearly for the purposes of business. We are, therefore, of the view that interest paid on these advances utilised for the purposes of the assessee's business is allowable expenditure under section 36(1)(iii) of the Act. In coming to the above findings of fact, we concur with the well reasoned and judicious findings in the impugned order of the learned CIT(A) (supra). We also draw support from the ratio of the decision of the Hon'ble Apex Court in the case of S.A. Builders Ltd. (288 ITR 1) (SC), the Hon'ble Bombay High Court in the case of Reliance Infrastructure Ltd. (207 Taxman 219) (Bom) and Srishti Securities P. Ltd. (2010) 321 ITR 498 (Bom).

5.3.4 In the factual and legal matrix of this case as discussed above from para 5.1 to 5.3.3 of this order (supra), we are of the considered view that no interference is called for in the impugned order of the learned CIT(A). We, therefore, sustain and confirm the decision of the learned CIT(A) in holding that since the amount advanced to VTL as share application money was done in the normal course of its business, for purposes of its business and was made on grounds of commercial expediency, the disallowance of ₹12,87,36,636/- out of interest claimed under section 36(1)(iii) of the Act was not warranted and in deleting the same.

Consequent to our decision, upholding the learned CIT(A)'s view that the share application money advanced to VTL was for purposes of business of the assessee, we also uphold the finding of the learned CIT(A) the 'upfront fee' of ₹1,25,00,000/- paid to Central Bank of India on loan taken from it is also allowable as a deduction from the assessee's income. In view of our finding above, we dismiss grounds 1 and 2 raised by Revenue.

6. In the result, the Revenue's appeal for A.Y. 2007-08 is dismissed.

Order pronounced in the open court on 31st May, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 31st May, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -7, Mumbai*
4. *The CIT - 3, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.