

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "B" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.1818/Kol/2010**  
Assessment Years:2007-08

Jayshree Motors Pvt. Ltd., White House, 4 <sup>th</sup> Floor, Block-D, 119, Park Street, Kolkata-700 016 [PAN No.AABCJ 2880 K]	<b>बनाम / V/s.</b>	ITO Ward-3(4), 8/2 Esplanade, 3 <sup>rd</sup> Floor, Kolkata- 700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri D.S.Damle, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri Provasch Roy, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	19-09-2016
घोषणा की तारीख/Date of Pronouncement	28-09-2016

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-I, Kolkata dated 26.07.2010. Assessment was framed by ITO Ward-3(4), Kolkata u/s 143(3)(ii) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 22.12.2009 for assessment year 2007-08. The grounds raised by the assessee per its appeal are as under:-

*"01. For that, on the facts and in the given circumstances, the addition of Rs.5,76,231/- on account of notional interest on temporary accommodation by way o loan free of interest to an associate company was not justified and therefore, is liable to be quashed/cancelled.*

*02. For that, on the facts and in the given circumstances, the Learned Assessing Officer was totally unjustified in concluding that the Appellant adopted dual policy of utilizing interest bearing bank loan for running its business operations and giving its own funds to a related company without any interest. The Learned Assessing Officer did not appreciate the other aspect of commercial prudence on the basis of which, the sums were given to associate firm time to time for meeting its various statutory obligations. Thus, the addition so made is totally unjustified, completely illegal and bad in law and may, therefore, kindly be deleted.*

*03. For that, on the facts and in the given circumstances, the Learned CIT(A) did not go into the detail and confirmed the addition made by the Assessing Officer. The observation of the Learned CIT as regards taking loans on interest and giving them to a sister concern without interest was not correct.*

*04. For that the Appellant Company craves leave to submit additional grounds and/or amend or alter the present grounds either before or during the course of the appellate proceedings.”*

Shri D.S. Damle, Ld. Authorized Representative appeared on behalf of assessee and Shri Provash Roy, Ld. Senior Departmental Representative appeared on behalf of Revenue.

2. The common inter-connected issue raised by assessee in Ground No.1 and 2 are that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining the disallowance of interest of Rs.5,76,231/- on account of interest free loan given to its associate company.

3. Facts in brief are that assessee is a Private Limited Company and engaged in sales and services of Ford passenger cars and its spare & accessories. During the year assessee was having interest bearing loan and has incurred interest expenditure of Rs.35,13,420/- thereon. The AO during the course of assessment proceedings observed that the assessee has given interest free loan to its associate concern on which the interest income was worked out at Rs.5,76,231/- on notional basis. Accordingly, AO added a sum of Rs.5,76,231/- to the total income of the assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that the loan was given to the associate enterprises out of its own surplus fund and no borrowed fund has been utilized for the loan given to the associate enterprises. However, Ld. CIT(A) rejected the plea of assessee and confirmed the order of AO by observing as under:-

*“I have gone through both the A/R’s arguments as well as the AO’s order. I believe the AO has firmly established that the company indeed exhibited a dual policy in taking loans on interest and advancing the same without interest to its sister concern. The case law as cited by the appellant, thus is not relevant to the facts of the case. The adoption of the interest rate by the AO is also fair. In the circumstances, this ground of the appellant fails. The addition is confirmed.”*

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

5. Before us Ld. AR submitted paper book which is running pages 1 to 46 and cited case law. Ld. AR of assessee stated that loan was given to associate enterprise out of its own surplus fund and which is as on 31.03.2007 of the assessee is of Rs.1,83,59,374/- and interest free advance given to its associate concern is of Rs.45,01,820/-. He also submitted that AO in the instance case, has worked out the interest income on the advance given to the associate concern on notional basis, therefore the act of the AO is beyond the provision of law. Had the AO disallowed the interest expense rather charging interest income on the advance given on the notional basis then the situation would have been different in so far as to make the disallowance on the advance given. On the other hand, Ld. DR vehemently supported the order of Authorities Below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. From the foregoing discussion, we find that the AO in the instance case has added the interest income on the advance given by assessee on

notional basis and it was also confirmed by Ld. CIT(A). However, the ld. AR before us argued that the dispute before the AO was the interest expenses claimed by the assessee and therefore he should have disallowed the interest expenses rather charging the interest income on notional basis on the amount advanced to the associate concern. In this connection we agree with the argument of the ld. AR in so far the income charging on the money advanced to the associate concern. As per the AO the fund was given out of the borrowed fund therefore the interest income was calculated on such fund. There was a direct link as per the lower authorities between the borrowed fund and money advanced to associate concern. We also find whether the AO has worked out the income on notional basis or he should have disallowed the interest expenses, in either case he wanted to levy the tax on the borrowed money utilized for the purpose of the business other than assessee. But in our considered view the AO was to disallow the interest expenses on the money advanced to the associate concern. The lower authorities needs to work out period for which the interest bearing loan was utilized by the associate concern and the interest pertinent to that advanced money. But the lower authorities erred in charging the interest income on notional basis. In this connection we rely in the case law of *CIT vs. Rungamatee Trexim (Pvt) Ltd.* in **GA No. 3796 of 2008** dated 09.12.2008 cited by the ld. AR. The relevant operative portion of the said judgment is reproduced below:-

*“We have perused the order passed by the Commissioner of Income Tax (Appeals) and the order passed by the learned Tribunal. It appears that the question arose in respect of notional interest n loan when the assessee had advance interest-free loan to one Hindustan National Glass & Industries Ltd. it further appears that the assessee was one of the promoter of the said company. The Commissioner of Income Tax (Appeals) in his order held as follows:*

‘I have carefully considered the facts of the case and the findings of the Assessing Officer from the audited accounts. I find that as of 31<sup>st</sup> March, 2005 the assessee’s net owned funds was Rs.6.88 crores which were far in excess of the interest free advance given to M/s Hindustan National Glass & Industries Ltd., a company of which the assessee was a promoter. The assessee did not have any borrowed funds on 31<sup>st</sup> March, 2005 and as such it was not a case where borrowed funds were diverted for granting interest free loans the assessee had applied its own funds in granting interest free advance to a body corporate of which the assessee was a promoter. On these facts, I fully agree with the A/R’s submissions that the Assessing Officer has brought to tax notional or hypothetical

income. The Supreme Court in catena of case has held that the subject matter of tax is always income which should be real income and not hypothetical income. The Income Tax Act does not permit taxation of hypothetical or opportunity income and what is subject matter of tax is read income, irrespective of the fact whether an entry is made in the books of account or not. This is the ratio laid down in the case of **Godhra Electric Co. Ltd. vs. CIT** 225 ITR 746). The Income Tax Act does not compel an assessee to earn maximum income but brings to tax only the income which is actually earned by an assessee. It is a settled proposition of law that in what manner the assessee should conduct his business is best left to the discretion of the assessee and the Assessing Officer cannot sit in the arm chair of the businessman to decide, what should have been the income earned. If an assessee does not bargain to earn income then an Assessing Officer cannot compel him to earn such income and cannot resume accrual of income, based entirely on his subjective notions as what constitutes fare return on investment. In business there cannot be certainly about earning of income and therefore business income cannot be assessed entirely on notional basis. In any opinion, none of the provisions of Chapter-IV of the Income Tax Act authorized the Assessing Officer to assess notional of hypothetical income. The addition of the notional interest of Rs.10 Lacs as business income of the assessee is therefore deleted.”

Now coming to the argument of Id. AR that the borrowed fund was not utilized for the purpose of giving the interest free loan to associate concerns, the question arises before whether it is given out of the borrowed fund or owned fund that needs to be adjudicated. From the submission of the assessee we find that the sufficient fund was available with the assessee as discussed above to advance the money to its associate concern. The Id. DR has not brought anything contrary to the arguments of the Id. AR. Therefore, in our considered view, the authorities below should have disallowed the interest expenses rather than charging interest income on notional basis. In the instant case, the interest expense claimed by assessee but AO instead of disallowing the interest has added the interest income on notional basis which was not the dispute from the facts of the case. In this connection, we rely in the decision of Hon'ble jurisdictional High Court in the case of *CIT vs. Rungamatee Trexim (Pvt) Ltd.* in **GA No. 3796 of 2008** dated 09.12.2008 *supra*.

Respectfully following the decision of Hon'ble jurisdictional High Court we reverse the orders of Authorities Below and we allow ground of assessee's appeal. AO is directed accordingly.

7. Last issue in this appeal of assessee is general in nature and call for any specific adjudication.

8. **In the result, assessee's appeal stands allowed.**

Order pronounced in open court on 28/09/2016

Sd/-  
(S.S.Viswanethra Ravi)  
Judicial Member

Sd/-  
(Waseem Ahmed)  
Accountant Member

\*Dkp

दिनांक:- 28/09/2016 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी /Appellant-Jayshree Motors Pvt. Ltd., White House, 4<sup>th</sup> Floor, Block-D  
119, Park Street, Kolkata-16
2. प्रत्यर्थी/Respondent-ITO Ward-3(4), 8/2 Esplanade East, 3<sup>rd</sup> Floor, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता