

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

**BEFORE SHRI. G. D. AGRAWAL, PRESIDENT
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.6656/DEL/2015
Assessment Year:2011-12

ITO Ward 8(4) New Delhi	v.	M/s Everplus Securities & Finance Ltd. 28, Najafgarh road New Delhi
		TAN/PAN:AAACE2672H
(Applicant)		(Respondent)

Applicant by:	Shri S.S. Rana, CIT (DR)		
Respondent by:	Shri K. Sampath, Advocate		
Date of hearing:	24	08	2017
Date of pronouncement:	14	09	2017

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 24/9/2015, passed by the ld. CIT (Appeals)-14, New Delhi for the quantum of assessment passed u/s. 143(3) of the Income Tax Act, 1961 for assessment year 2011-12. The grounds raised by the Revenue in the grounds of appeal are as under:-

- Ld. CIT (A) erred in law and on facts of the case in deleting the disallowance at Rs.31,57,440/- made by the AO on account of interest paid on the funds which were advanced interest free.*

2. Ld. CIT(A) erred in law and on facts of the case in deleting the disallowance at Rs.20,04,859/- made by the AO u/s 14A of the I. T. Act, 1961 read with Rule 8D of the I. T. Rules 1962.

2. The brief facts qua the first issue are that, the assessee-company is engaged in the business of dealing in shares and advancing loan. The Assessing Officer noted that the assessee had advanced interest free loan to its related concerns, M/s Gagan Infra Energy Ltd. and M/s Venkatesh Diamonds Pvt. Ltd. The Assessing Officer, held that the assessee has taken huge unsecured loans, on which it is paying interest amounting to Rs.1,47,93,296/- during the year and on the other hand it has given interest free loan to its sister concerns. In response to the show cause notice issued by the AO, the assessee submitted that so far as advance given to M/s Gagan Infra Energy Ltd. is concerned, it was given in the assessment year 2010-11 and the amount has been received back during the year under consideration and the same issue had arisen in the immediately preceding year also, for which detailed reply was filed and the same submission was reiterated again before the Assessing Officer. So far as fresh amount given during the year, it was submitted that the loan given were only to the extent of Rs.8.60 crores which included interest of Rs.1.33 crores and thus, net increase in the loan was only to the extent of Rs.7.27 crores. The increase was mainly for the funds received from M/s Nalwa Sons Inv. Ltd. of Rs.4.32 crores and Rs.2.92 crores received from M/s Jindal Holdings Ltd. These funds have been used for making deposits and borrowings have not been used for giving any kind of advances and, therefore, no disallowance should be made. The

Assessing Officer, however, rejected assessee's contention and computed the disallowance at Rs.31,57,440/- mainly on the ground that assessee had borrowed funds on which it was paying interest and at the same time it has also given interest free advances to the sister concern, which is against the business interest and also assessee was unable to establish business purpose for advancing interest free loans.

3. Before the Id. CIT(A), the assessee had submitted following facts and submissions which, for the sake of better understanding of the facts, are reproduced hereunder:-

"It is humbly submitted that the disallowance of interest was not proper and justified as there was no case for the same except conjecture and surmises. In so far as advance to M/s Gagan Sponge Iron Ltd is concerned, it is submitted that the advance was given mainly in FY 2009-10 (AY 2010-11) and the amount has been received back during the year under consideration on 5/10/2010 as can be seen from the copy of account enclosed.

In so far as the fresh amount given during the year to Gagan Sponge Iron Ltd and Venkatesh Diamonds Pvt Limited are concerned, it is submitted that these advances were given out of own funds. As can be seen from the balance sheet, the increase in the loans during the year is only to the extent of Rs. 8.60 crores which include interest of Rs. 1.33 crores. Thus the net increase in the loans is only to the extent of Rs. 7.27 crores. This increase was for mainly for amount of 4.32 crores received on 20/1/2011 from M/s Nalwa Sons

Investment Limited and Rs. 2.92 crores received from Jindal Holdings Limited on the same date. These funds alongwith other funds were used for making fixed deposit with Bank on 21/1/2011. A copy of the bank FOR is enclosed. The said FOR continued till 31st March 2011 and is depicted in the balance sheet under the heading current assets. Since borrowings made during the year have not been used in giving advances, it is submitted that no disallowance of interest was warranted.

The advance to M/s Venkatesh Diamonds Pvt Limited was given on 10/3/2011 and has nothing to do with the above borrowings made during the year. In other words, current year's borrowings were not used for advancing this amount. In respect of old amount given to Gagan Sponge Iron Limited we submit that the said advance was given in the month of October/November 2009 as per copy of account enclosed. A bare look at the balance sheet of FY 2009-10 would show that the borrowings as at 31.3.2009 and 31.3.2010 are at Rs. 40.51 crores and 41.73 crores. Thus there was only a marginal increase of Rs. 1.22 crores in the borrowings during that year. We are filing a chart showing the balances outstanding in all the loans accounts as at 31/3/2009 and 31/3/2010. Copies of ledger account of all the lenders are also enclosed. A perusal of these account would show that the fresh amount were received only in the month of May 2009 - Rs. 43 lacs, July 2009 Rs.30.77 lacs and Rs. 14 lacs in the month of March 2010. Thus no money was received in the month of October/November 2009 in which month the appellant has advanced the impugned

amounts. Hence it is clearly proved that no borrowings of the FY 2009-10 were used in advancing this loan.

The second objection of the AO was that the appellant had mixed funds and therefore he held that one can not differentiate as to which money came in the company which has gone out. In this regard, we would like to submit that the appellant has filed a detailed chart with the AO during the course of assessment proceedings. The said chart is once again enclosed. A perusal of the chart would show the sources are as follows:-

<u>Source</u>	<u>(Rs. In lacs)</u>
<i>Dividend income during FY 2002-03</i>	10
<i>Sale of shares during FY 2002-03</i>	54
<i>Refund against old advance FY 2002-03</i>	12
<i>Interest free loan from Brahamputra Capital & Financial Services Ltd. in FY 2003-04 (Earlier received from Sun Investment Pvt. Ltd. and them repaid)</i>	423
<i>Professional income earned during FY 2003-04</i>	252
<i>Dividend income during FY 2009-10</i>	<u>73</u>
<i>Total</i>	<u>824</u>

Thus the source of impugned advance was clearly proved and it is further clearly proved that no interest bearing borrowings have been diverted in giving the said advance. The AO had completely ignored this factual position

and has not even dealt with the contentions of the appellant which was submitted during the course of assessment hearing. The appellant has clearly proved that no borrowings on which interest was paid were used or diverted. Hence the disallowance made by the AO deserves to be deleted.

The AO on the other hand has observed that there was mixed funds. As already mentioned that the appellant has proved direct nexus and hence the mixed funds theory of the AO is not relevant. Without prejudice to the above, even if the mix funds theory is applied to the facts of the present case, the same does not hold good. The position of interest free funds available with the appellant is as under:

<u>PARTICULARS</u>	AS AT	AS AT	AS AT
	31/3/11	31/3/10	31/3/09
Share capital	21,92,50,200	21,92,50,200	21,92,50,200
Add: Reserves & Surplus	4,52,00,000	4,52,00,000	4,52,00,000
	26,44,50,200	26,44,50,200	26,44,50,200
Less: Dr. Balance of P.& L.	8,91,93,473	9,60,45,177	9,51,96,623
Share holders funds	17,52,56,727	16,84,05,023	16,92,53,577
Add: Interest free unsecured loans from:			
Brahamputra capital	18,78,00,000	18,78,00,000	18,78,00,000
Nalwa Investment Ltd	2,90,36,330	2,90,36,330	2,90,36,330
Total Interest free funds	39,20,93,057	38,52,41,353	38,60,89,907

Even if it is assumed that the impugned advance was given out of mixed funds (although the appellant has proved otherwise), it is seen from the above table that the appellant had its own funds of more than 38 crores at the beginning/end of the year. These funds were far in excess of the amount advanced aggregating to Rs. 8.24 crores. It is settled law that where the own funds far exceeded the amount lent, the courts have held that it should be presumed that the money has been lent out of own funds. And accordingly, no interest can be disallowed.

4. Apart from above submissions reliance was placed on the judgment of the Hon'ble Bombay High Court in the case of **CIT vs. Reliance Utilities and Power Ltd., 313 ITR 314 (Bom.)** and catena of other decisions. The ld. CIT(A), deleted the said disallowance after observing and holding as under:-

“I have considered the submissions of the appellant as well as the findings of the Ld. AO. Keeping into consideration the various case laws of the higher appellate authorities and the Hon'ble Courts I found that the Ld. AO is not justified for making the disallowance of Rs. 31,57,4401- out of interest expenses in view of the following facts and circumstances of the case :-

- i. It was submitted before the Ld. AO that the appellant has not given the said advance out of the interest bearing borrowings but the said interest free advance was given out of appellant's own funds/interest free borrowings. The appellant had also filed a detailed chart showing the direct source of the said advance to*

- prove its contention that no interest bearing borrowings were used to give this advance.*
- ii. *The Ld. AO was not satisfied with the explanations as offered by the appellant. The AO observed that since the appellant failed to establish the business purpose of advancing interest free loans, he added/disallowed a sum of Rs. 31,57,440/-. He further held that the appellant has borrowed funds and paying interest on one hand and giving interest free loan on the other hand and hence there is no business prudence. He observed that one can not differentiate as to which money came in the company which has gone out. He further held that in to order to claim interest expenses, the appellant must prove that the borrowings was used for business purposes and since the appellant failed to prove/establish the business purpose of advancing interest free loan to sister concern, the AO disallowed Rs. 31,57,440/-.*
- iii. *The appellant has clearly proved that no borrowings on which interest was paid were used or diverted. Hence the disallowance made by the AO deserves to be deleted.*
- iv. *The appellant had its own funds of more than 38 crores at the beginning/end of the year. These funds were far in excess of the amount advanced aggregating to Rs. 8.24 crores. It is settled law that where the own funds far exceeded the amount lent, the courts have held that it should be presumed that the money has been lent out of own funds. And accordingly, no interest can be disallowed.*
- v. *In CIT Vs. Reliance Utilities and Power Ltd. 313 ITR 340 (80m) Hon'ble Bombay High Court observed that if*

there are funds available both interest free and borrowed funds then presumption would arise that investment would be treated to have been made out of interest free funds available with the company, if the interest free funds were sufficient to meet the investment.vi. It is further submitted by the Ld. AR that the Ld. AO failed to point out any specific interest bearing funds borrowed by the appellant which were diverted into giving interest free loan. The interest was paid on loans borrowed for the purposes of business. No diversion of such amount to interest free loan was pointed out by the AO.

In view of the above discussion, the appellant has clearly proved that no borrowings on which interest was paid were used or diverted. Hence the disallowance made by the AO deserves to be deleted. I order accordingly. Hence, the above grounds of appeal are allowed.”

5. After hearing both the parties and on a perusal of the findings given in the impugned order as well as the material referred to before us at the time of hearing, we find that it is an undisputed fact that the assessee had interest free funds available with it at the time when advances were given which ranged between Rs.38.60 crores to Rs.39.21 crores right from assessment year 2009-10 to 2011-12. On the other hand, amount advanced to the related parties/sister concerns was only Rs.8.24 crores which far exceeded the interest free funds available with the assessee, as has been incorporated in the foregoing paragraphs. Once that is so, then the ratio laid down by the Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd. (supra), as relied upon by the ld. Counsel

for the assessee before us, gets squarely applicable. Accordingly, the order of the ld. CIT (A) in deleting the disallowance of interest is upheld and hence ground No.1 raised by the Revenue is dismissed.

6. So far as issue relating to ground No.2 is concerned, it relates to disallowance of Rs.20,04,859/- made under section 14A of the Act. The relevant facts as noted by the AO are that the assessee had shown tax free dividend income of Rs.1,74,11,111 and at the same time the assessee has claimed interest on loan expenses of Rs.1,47,93,296/-. The assessee, for the purpose of disallowance under section 14A, had made *suo-moto* disallowance of Rs.1,06,63,031/- which was accompanied by a detailed chart showing calculation of disallowance. The Assessing Officer held that the said calculation is not correct, as the assessee has restricted 0.5% of average investment for the purpose of net expenditure to Rs.2,33,444/- which should otherwise be computed to Rs.22,38,302/-. He thus, held that attribution of indirect expenditure under rule 8D(2)(iii) is not correct and accordingly, made disallowance for sums aggregating to Rs.1,26,67,890/-, which included disallowance of interest under rule 8D(2)(ii) of Rs.1,04,28,292/-; and disallowance of indirect expenditure under rule 8D(2)(iii) of Rs.22,38,302/-. Since the assessee had already disallowed Rs.1,06,63,031/-, the difference amount of 20,04,859/- was added.

7. Before the ld. CIT(A), the assessee submitted that the amount debited under the head "interest expenses & administrative expenses" and disallowances made by the assessee were as under:-

Expenses head	Amount debited in P&L A/c	Amount already disallowed u/s 14A
Interest expenses	1,47,93,296	1,04,28,292
Administrative exp.	13,00,528	2,33,444
Demat expenses	1,296	1,296
Total	1,60,95,120	1,06,63,031

8. With regard to indirect expenditure, it was submitted that the total expenditure debited itself was Rs.13 lakhs, the details of which are as under:-

HEAD OF EXPENDITURE	AMOUNT (RS)
Directors Meeting fees	5,000
Registration & Filing fees	2,240
Legal & Professional Expenses	8,22,589
Auditors Remuneration	29,781
Remuneration to Employees	4,32,000
Office Expenses	8,918
Total	13,00,528

Out of the said expenditure, it was submitted that the expenses like Director's meeting fees, registration & filing fees; auditor's remuneration; and office expenses cannot be held to be related to earning of exempt income and only remuneration given to employees given at the best can be held to be relatable to the earning of exempt income, therefore, assessee had worked out the disallowance at Rs.2,33,444/. Apart from that, strong reliance was placed on the decision of the Hon'ble Delhi High Court in the case of Maxopp Investment Limited, 347 ITR 272.

9. The Id. CIT (A), after considering the entire submissions and also facts and material on record, deleted the disallowance made by the Assessing Officer.

10. After considering the submissions made by both the parties, we find that the main dispute is with regard to the disallowance of indirect expenditure made under rule 8D(2)(iii) which as per the assessee is Rs.2,33,444/- as against Rs.22,38,302/- made by the Assessing Officer. So far as disallowance of interest is concerned, by and large the figure of disallowance remains the same, as both the Assessing Officer and the assessee have computed disallowance at Rs.1,04,28,292/. Thus, only dispute is with regard to quantum of disallowance of indirect expenditure. From the perusal of the nature of expenditure and also total expenditure debited under the head "administrative expenses", we find that first of all, total expenditure debited itself is Rs.13 lakhs which also contains major expenditure on account of legal and professional expenses which has nothing to do with earning of dividend income. Similarly, registration & filing fees, etc. also cannot be said to be linked with earning of exempt income. Thus, having regard to the nature of accounts and expenditure debited, the amount disallowed by the assessee at Rs.2,33,444/- is quite reasonable and fair and the Assessing Officer without finding any defect, either in the nature of account or in the claim of the assessee, has erroneously proceeded to arbitrarily compute the disallowance under rule 8D(2)(iii), especially when disallowance has been worked out far excess than the total expenditure

debited. Accordingly, the order of the Id. CIT(A) deleting the said disallowance is upheld and the Revenue's appeal is dismissed.

10. In the result, appeal of the Revenue stands dismissed.

Order pronounced in the open Court on 14th September, 2017.

Sd/-
[G.D. AGRAWAL]
PRESIDENT

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 14th September, 2017

JJ:

Copy forwarded to:

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

Assistant Registrar

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