

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'A', KOLKATA

[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]

I.T.A. Nos. 1964, 1965 & 1966/Kol/2013  
Assessment Years: 2003-04, 2005-06 & 2006-07

*DCIT, Circle – 8, Kolkata.....Appellant*  
*Aayakar Bhawan, 5<sup>th</sup> Floor,*  
*P-7, Chowringhee Square,*  
*Kolkata – 700069*

*M/s. Newdeal Finance & Investment Ltd.....Respondent*  
*37, J.L. Nehru Road,*  
*Kolkata – 700071*  
*[PAN: AAACN2378P]*

**Appearances by:**

*Shri Sallong Yaden, Addl. CIT appearing on behalf of the Revenue.*  
*Shri J.P. Khaitan, Sr. Counsel appearing on behalf of the Assessee.*

Date of concluding the hearing : September 06, 2017

Date of pronouncing the order : September 13, 2017

**ORDER**

**PER P.M. JAGTAP, AM**

These three appeals filed by the revenue against three separate orders passed by the Ld. CIT (Appeals) – 8, Kolkata all dated 18.03.2013 for A.Y. 2003-04, 2005-06 and 2006-07 involve a common issue and the same therefore have been heard together and are being disposed of by a single consolidated order.

2. At the outset, it is noticed that there is a delay of one day on the part of the revenue in filing these appeals before the Tribunal. In this regard, the revenue has filed an application seeking condonation the said delay and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay on the part of

the revenue in filing these appeals. Even the learned counsel for the assessee has not raised any objection in this regard. The said delay is therefore condoned and these appeals of the revenue are being disposed of on merit.

3. The solitary common issue involved in these appeals of the revenue relates to the deletion by the Ld. CIT (A) of the disallowance made by the AO on account of interest expenditure.

4. The assessee in the present case is an investment company. The return of income for A.Y. 2003-04 was filed by it on 06.11.2003 showing a loss of Rs. 1,69,06,925/- and offering a total income of Rs. 7,64,714/- u/s 115JB of the Act. In the assessment originally completed under section 143(3) vide an order dated 10.03.2006, the loss as declared by the assessee company in its income was accepted by the AO. Subsequently, the AO however noticed that the claim of the assessee for deduction on account of huge interest expenditure was wrongly allowed in the original assessment. He accordingly reopened the assessment and issued a notice to the assessee under section 148 on 24.03.2008 after recording the reasons. During the course of reassessment proceedings, the claim of the assessee for deduction on account of interest expenditure of Rs. 3,00,94,451/- was examined by the AO. On such examination, he found that the said interest was paid by the assessee on the borrowed funds which were utilised for making investment in shares. He also noted that the shares purchased by the assessee by utilising borrowed funds were shown as investment and not as stock in trade. He, therefore, disallowed the

claim of the assessee for deduction on account of interest expenditure under section 36(1)(iii) of the Act. He also disallowed the alternative claim of the assessee for deduction on account of said interest expenditure u/s 57(iii) of the Act on the ground that the same was not made by the assessee by filing revised return and the interest expenditure even otherwise was not allowable as deduction under section 57(iii) being capital in nature having been incurred in connection with the capital assets. Accordingly, the entire expenditure of Rs. 3,00,94,451/- was disallowed by the AO in the assessment completed u/s 143(3) / 147 of the Act for A.Y. 2003-04 vide an order dated 30.12.2008. Meanwhile the assessments for A.Y. 2005-06 and 2006-07 were also completed by the AO u/s 143(3) vide orders dated 10.12.2007 and 26.12.2008 respectively wherein a similar disallowance was made by the AO on account of assessee's claim for interest expenditure for the same reasons as given in A.Y. 2003-04.

5. Against the orders passed by the AO for A.Y. 2003-04 u/s 143(3) / 147 and for A.Y. 2005-06 and 2006-07 u/s 143(3) of the Act, appeals were preferred by the assessee before the Ld. CIT (A). During the course of appellate proceedings before the Ld. CIT (A), a detailed submission was made by the assessee in writing in support of its claim for deduction on account of interest expenditure u/s 36(1)(iii) as well as u/s 57(iii) of the Act. The applicability of section 14A of the Act was also challenged by the assessee in the same submission. After considering the said submissions made by the assessee, the Ld. CIT (A) decided the issue relating to the disallowance on account of

interest expenditure as involved in the case of the assessee for all the three relevant years by recording his observations / findings, which are identical in all the three years, as under:

*"I have carefully considered the submission put forth on behalf of the appellant along with the case laws relied upon & supporting documents furnished, perused the facts of the case including the observation of the AO in the impugned assessment order and other materials brought on record. All these sub-grounds of Main Ground No. 1 of appeal of the appellant are directed against the action of the AO in disallowing Rs. 3,00,94,451/- on account of interest paid on borrowed funds. It is observed by the AO that the payment of interest amount pertained to expenditure incurred on borrowed funds which had been utilized for making investments in equity shares. The AO observed that the appellant company basically invested in share with a prime objective of earning dividend income. The argument put forward by the AR of the appellant along with the case lodge relied upon and the contention raised by the AO have carefully been examined. Perusal of the nature of income earned and declared by the appellant company in its returns year after year reveals that the appellant mainly derives income from, profit on sale of investment i.e. capital gain, brokerage and dividend and other income. It is seen that the underline intention of the appellant behind share investment has never been the earning of dividend income which is found to be an incidental income of the appellant. Even though the dividend income earned in the earlier years has been nominal but from the assessment year 2004-05 onwards and particularly in the relevant assessment year the dividend income received is quite substantial. After perusing the provision of sec. 14A, it is seen that the only expenditure actually incurred in relation to earning income which does not form part of the total income under the IT act is disallowable. It is found ridiculous to assume that such interest expenditure to the extent of Rs. 3,00,94,451/- was required to be incurred by the appellant company in connection with earning of dividend income of Rs. 1,41,22,002/-. It is the submission of the appellant that the dividend income earned during the year arose out of the earlier years' investment in the shares and that it had no nexus with this year's borrowed funds. It was further submitted that no additional effort was made by it during the year of receiving the dividend warrant for the tax free dividend income of Rs. 1,41,22,002/-. No evidences appear to have been brought on record by the AO to quantify the actual expenditure incurred by the appellant for earning the dividend income. The AO has discussed the issue at length in the assessment order and*

*observed that the appellant had huge temporary overdraft as on 31.03.2003 and it has made investment in shares more than that amount. Therefore, he concluded the whole overdraft was utilized for acquisition of shares and thus he made impugned disallowance on account of interest paid on such overdraft.*

*The AR of the appellant has also made detailed and lengthy submissions in this regard by rebutting the allegation of the AO which has been gone through and considered. It is seen that the identical issue had come up for consideration in appellant's own appeal for the assessment years 1999-2000, 2000-2001, 2001-2002, 2004-05 and 2007-08 also and the observations and findings of the AO and the submissions of the AR in respect of this issue for the year under consideration are similar to those made for the assessment years 1999-2000, 2000-2001, 2001-2002, 2004-05 and 2007-08. The salient features of the AO's observations and findings and of the AR's submissions have been discussed by the CIT (A) V & VI, Chennai in the appellant's appeal for the above mentioned assessment years i.e. 1999-2000, 2000-01, 2001-02 & 2004-05 and considering the same the appeal for the AY 2007-08 was also decided by me. The facts of the case in respect of the present issue for the year under consideration are identical to those for the assessment years 1999-2000, 2000-2001, 2001-2002, 2004-05 & 2007-08.*

*For the reason discussed in the appellant's appeal for the assessment years 1999-2000, 2000-2001, 2001-2002, 2004-05 & 2007-08, relying upon the decision of the Hon'ble Chennai Bench of ITAT in the case of M/s. Sundaram Finance Ltd., the AO is directed to restrict the disallowance at Rs. 2,82,440/- being 2% of the exempt dividend income of Rs. 1,41,22,002/- considered to be attributed to the earning of such exempt income. Thus, this ground of appeal is partly allowed.*

Aggrieved by the orders of the Ld. CIT (A), the revenue has preferred these appeals before the Tribunal.

6. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the case was made out by the assessee during the course of

assessment proceedings before the AO to claim the deduction on account of interest expenditure in question under section 36(1)(iii) being the business expenditure. The Assessing Officer did find merit in the case of the assessee and rejected the claim of the assessee for deduction on account of interest expenditure u/s 36(1)(iii) by giving specific reasons. He also disallowed the assessee's alternative claim for deduction on account of the said interest u/s 57(iii) of the Act. While challenging the disallowance made by the AO on account of its claim for deduction for interest expenditure u/s 36(1)(iii) and / or u/s 57(iii), a detailed submission was made by the assessee in writing before the Ld. CIT (A). Although the Ld. CIT (A) in his impugned order has extracted the said submission, a perusal of the operative portion of his impugned order shows that he has not decided the issue relating to the assessee's claim for deduction on account of interest expenditure u/s 36(1)(iii) and / or 57(iii) specifically in as much as no finding has been given by him on this issue. It appears that his decision on this issue has got influenced by the decision of the First Appellate Authority rendered in assessee's own case for other years wherein the issue relating to disallowance of interest seemingly was considered u/s 14A of the Act. At the time of hearing before us, the learned representatives of both the sides have also not disputed this position. They have also agreed that it would be appropriate to send the matter back to the Ld. CIT (A) for considering the claim of the assessee for deduction on account of interest u/s 36(1)(iii) and / or u/s 57(iii) on merit. We accordingly set aside the impugned orders of the Ld. CIT (A) on this issue and remit the matter back to him with the direction to decide first the issue relating to the assessee's claim for

deduction in account of interest expenditure u/s 36(1)(iii) and / or u/s 57(iii) on merit and then to consider the applicability of u/s 14A.

**7. In the result, all the three appeals of the revenue are treated as allowed for statistical purposes.**

Order Pronounced in the Open Court on 13<sup>th</sup> September, 2017.

Sd/-

(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 13/09/2017**

Biswajit, Sr PS.

Copy of order forwarded to:

1. M/s. Newdeal Finance & Investment Ltd., 37, J.L. Nehru Road, Kolkata- 700071
2. DCIT, Circle – 8, Kolkata
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata