

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1000/KoI/2015

(निर्धारणवर्ष / Assessment Year: 2010-11

I.T.O, Ward-2(1), Kolkata	Vs.	M/s Rajshree Vanijya Pvt. Ltd.
		7, Ganesh Chandra Avenue, Kolkata-13
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AABCR 2400 B		
(ASSESSEE)	..	(RESPONDENT)

Assessee by : Shri Kalyan Nath, ACIT DR
Respondent by : Shri Subash Agarwal, Advocate

सुनवाईकीतारीख/ **Date of Hearing** : **06/09/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **29/11/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2010-11, is directed against the order passed by the Id. Commissioner of Income Tax(Appeals)-1, Kolkata, in Appeal No.92/CIT(A)-1/W-2(1)/2013-14, dated 25.03.2015, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act 1961 (hereinafter referred to as the 'Act') dated 12.03.2013.

2. The Revenue has raised the following grounds of appeal:

"1. That on the facts and circumstances of the case, the Id. CIT(A)-1, Kolkata, had erred in allowing relief against the disallowance interest on borrowed fund of Rs.56,66,773/- which is not utilized for the assessee's business purpose.

2. That tax effect in the instant case is also much above the monetary limit as prescribed vide CBDT's instruction No.3/2011 & instruction No.5/2014 for filing of appeal before Ld. ITAT, Kolkata.

3. That the assessee craves leave to amend, modify or alter any grounds of appeal during the course of hearing of this case."

4. The brief facts qua the issue are that the assessee company is a trader of Textile machines, Scrap, Iron & Steel and Yarn. During the Financial Year 2009-10, as per the Profit & Loss a/c, the assessee made a sale of Rs.178,45,97,471/-

against a purchase of Rs.176,49,71,622/-. During the assessment proceedings the assessee submitted the details of sundry debtors and creditors. The AO noted that in the profit and loss account the assessee has debited an amount of Rs.56,66,773/-, on account of payment of interest. During the course of hearing the assessee produced copies of bank statements with Allahabad Bank, Kolkata Red Cross Place Branch. On thorough scrutiny of the bank statement it was noticed that there were payments to two companies M/s NLBD Marketing Pvt. Ltd and M/s Phool Commercial Pvt. Ltd on various dates. On verification of the details of S/debtors it was noticed that there was an amount of Rs.3,54,96,917/- against M/s NLBD Marketing Pvt. Ltd. The AO noted, from the details submitted in respect of loans and advances given (Loan debtors) an amount of Rs.1,92,34,000/- was shown outstanding in the name of M/s Phool Commercial Pvt. Ltd. However, the name of M/s NLBD Marketing Pvt. Ltd was not appearing in the details of sales made by the assessee as submitted during the course of hearing. During the course of hearing, the AO asked the assessee, to explain the discrepancy along with the copy of ledger of the said party in the books of the assessee. The AO asked to explain as to why the payments made to M/s NLBD Marketing Pvt. Ltd during the year for Rs. 3,54,96,917/- would not be treated as loan paid to the said company by the assessee.

The assessee replied to the AO about the "Advance" to M/s NLBD Marketing Pvt. Ltd, stating that was an amount of Rs.3,54,96,917/- shown under sundry debtors as on 31.03.2010 in the name of M/s NLBD Marketing Pvt. Ltd. The amount has been advanced for purchase of property. The assessee's client had entered in a Memorandum of Understanding (MOU) with M/s NLBD Marketing Pvt. Ltd for the sale and purchase of property. Further in the F.Y.2010-11, M/s Rajshree Vanijya Pvt. Ltd sold a plot costing Rs.50,92,500/- and earned a profit of Rs.55,96,500/-. The sale and purchase transactions have been duly reflected in the profit and loss account of Financial year 2010-11. The Net profit of Rs.55,96,500/- has been offered for taxation under the head Profits and Gains of Business & Profession. The advance to M/s NLBD Marketing Pvt. Ltd was purely for business purpose. M/s Rajshree Vanijya Pvt. Ltd. also got a plot of land on 04.10.2012 valuing Rs.30 lakh approximately in full and final settlement on this account after receiving the complete principal amount advanced to M/s NLBD Marketing Pvt. Ltd. within 31.03.2012.

During the course of hearing, the assessee submitted the copy of ledger of M/s NLBD Marketing Pvt. Ltd in its books for the F.Y.2009-10. A close look of the ledger copy shows that the opening balance (debit) against M/s NLBD Marketing Pvt. Ltd stood at Rs.4,62,96,917/- as on 01.04.2009. After that the said party repaid Rs.2,18,80,000/- on different dates between 18.06.2009 to 03.02.2010. Again, from 05.03.2010 to 10.03.2010, the assessee paid a sum of Rs.1,10,80,000/- to the party. This clearly indicates that there were regular transactions between the party and the assessee during the year. But the purpose of such transactions could not be towards payment of any advance for the purpose of property dealing as claimed by the assessee. The copy of MOU entered with M/s NLBD Marketing Pvt Ltd by the assessee regarding investment on property dealing cannot substantially prove that the advances were made only towards the purpose of purchase of property by the assessee. Had it been the only purpose, there would not have been any repayment of money by the party to the assessee. Moreover, a substantial amount was kept outstanding and idle for years together does not commensurate with the normal business practice. The assessee company paid the advance even before financial year 2008-09 and it was first utilized in the year 2010-11. The assessee has allowed to keep the advance with M/s NLBD Marketing Pvt. Ltd unutilized for more than 3 years is contrary to the common business phenomenon. Moreover, a meager part of the advance was utilized after 3 years also speaks contrary to the contention of the assessee. Thus, considering all these factors, the AO inferred that the money forwarded to M/s. NLBD Marketing Pvt. Ltd. by the assessee and shown against S/debtors was actually interest free loan given to the said party for its benefit.

The AO also noted that there were regular course of payment and repayment between the assessee-company and M/s. Phool Commercial Pvt. Ltd. Therefore, the AO inferred that the money forwarded to M/s. Phool Commercial Pvt. Ltd. by the assessee was actually interest free loan given to the said party for its benefit.

Regarding deployment of fund, the assessee stated that the assessee's own funds were utilized in providing interest free advance. Reliance was placed by the assessee on the decisions of the Hon'ble Supreme Court in the case of M/s. S.A. Builders Ltd. Vs. CIT(2007) 288 ITR 1 (SC), and Hon'ble Calcutta High Court in the case of J. K. Industries Ltd. Vs. CIT(2011) 61 DTR 153.

However, the AO ignored the submissions of the assessee and stated that the quantum of interest paid on borrowed capital which was utilized in providing loan to M/s NLBD Marketing Pvt Ltd. and M/s Phool Commercial Pvt. Ltd, is Rs. 71,52,144/-. Therefore, the interest debited in the profit and loss account by the assessee at Rs. 56,66,773/- was disallowed.

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Id.CIT(A) who has partly allowed the assessee's appeal. The Id. CIT(A) was pleased to allow the claim in respect of loan given to M/s NLBED. However, we note that against the loan given to M/s Phool Commercial Pvt. Ltd., the assessee got only part relief.

6. Not being satisfied with the order of CIT(A), the Revenue is in appeal before us. The Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. The Id Counsel for the assessee defended the order passed by the Id. CIT(A).The Id Counsel for the assessee also pointed out that on the same identical facts the Hon`ble ITAT Kolkata in ITA No.1722/Kol/2013, A.Y. 2009-10, in assessee`s own case adjudicated the issue and confirmed the order of CIT(A).

7. We have heard both the parties and perused the material available on record, we note that in assessee`s own case, the CIT(A)-I, Kolkata has held that the advances to M/s. NLBD Marketing (P) Ltd. were for business purpose. Therefore, following the decisions in this regard for A.Y 2009-10 it was held that the advances to M/s. NLBD Marketing (P) Ltd. was for business purposes and therefore no disallowance was warranted from the interest debited to the P&L A/c.

With regards to M/s. Phool Commercial (P) Ltd., it was seen that the advances made to this concern during the year were to the extent of Rs.6,29,555/- including the advances of Rs.2,71,00,000/- brought forward as on 01-4-2009 which has already been considered in A.Y. 2009-10.However it is seen from the copy of ledger account of this concern in the books of account of the Assessee, that the advance carried forward from earlier year of Rs. 2,71,00,000/- was returned from time to time to the extent of Rs.2,63,00,000/- by 14.10.2009. However, again advances had been given to this concern from 06.11.2009 onwards to 12.11.2009

and returned from 31.12.2009 onwards with a closing balance of Rs. 1,92,00,000/- outstanding as on 31.03.2010. Therefore, considering these facts, the CIT(A) directed AO to disallow interest @15% p.a on the advances given to the Assessee from 16-11-2009 to 23-03.2010 (on the reducing balance) in excess of the Reserves of Rs 2,35,10,682/- only. Further, the CIT(A) directed that on the amount of Rs. 51,00,000/- (which was the amount considered for disallowance of interest in A.Y 2009-10) from 1.4.2009 to the time when such amount has been returned by the Assessee in the current year, interest @ 15% per annum was to be disallowed on the reducing balance.

From the aforesaid facts and the MOU between the assessee and the sister concern M/s NLBED, it is clear that the assessee has advanced the amount for the purpose of business and that it was for commercial expediency that the amount was advanced by the assessee, the said fact could not be controverted by the Id DR before us.

We also note that on the same identical facts the Coordinate Bench of Kolkata, in assessee`s own case (In ITA No.1722/kol/2013 A.Y.2009-10) adjudicated the same issue for which the Revenue is in appeal before us. Thus, respectfully following the decision of the Coordinate Bench Kolkata in assessee`s own case (supra) in the A.Y.2009-10 whereby the Coordinate Bench confirmed the order passed by the CIT(A). Therefore, we do not find any infirmity in the order passed by the Id. CIT(A) and we confirm the same and dismiss the appeal of the Revenue.

8. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on this **29/11/2017**.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक Dated 29/11/2017

RS, SPS

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Assessee – I.T.O, Ward-2(1), Kolkata
2. प्रत्यर्थी/ The Respondent- M/s Rajshree Vanijya Pvt. Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.