

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

**Before Shri Saktijit Dey, Judicial Member
and Shri Rajesh Kumar, Accountant Member**

ITA Nos.3690 & 3691/Mum/2015
(Assessment Years: 2010-11 & 2011-12)

M/s. Odyssey Capital P. Ltd. 4th Floor, Sadhana House 570 Pandurang Budhkar Marg, Worli Mumbai 400018	Vs.	Deputy Commissioner of Income Tax - 5(2) Mumbai
---	-----	---

PAN – AAACO2528A

Appellant

Respondent

Appellant by: Shri Vijay Mehta
Respondent by: Shri Suman Kumar

Date of Hearing: 16.01.2018
Date of Pronouncement: 24.01.2018

ORDER

Per Rajesh Kumar, AM

These appeals have been filed by the assessee against the order of the CIT(A)-10, Mumbai dated 23.04.2014 for assessment years 2010-11 and 2011-12.

2. The assessee has raised identical grounds of appeal in both the assessment years except difference in figures. The ground for A.Y. 2010-11 reads as under: -

“Disallowance out of Expenses :

1. *The learned CIT(A) erred in confirming the disallowance of Rs.41,822,471/- out of administrative expenses and directing that the administrative expenses of the appellant be divided amongst Six companies.*
 - 1.1 *The learned CIT(A) failed to appreciate and consider that the other group Companies are different entities having their own business setup and staff, functions independently and does not have any common business interest with your appellant.*
 - 1.2 *The learned CIT(A) has not given any findings whether the expenditure is of Capital or personal nature and / or under which provisions of the Act the same is disallowed.*

1.3 *The learned CIT(A) failed to appreciate and consider that the expenses incurred by your appellant for the group Companies aggregating Rs.6,903,077/- have been recovered from the said Companies, meaning thereby that no further expense is incurred by your appellant for such group Companies and hence no further disallowance is called for.*

2. *Without prejudice:*

Your appellant submits that the learned CIT(A) ought to have directed to deduct Rs.5,20,215/- being loss on asset sold / scrapped included under Administrative and Other Expense since Rs.5,20,215- is already added back in the Computation of Income.

Disallowance of Interest:

1. *The learned CIT(A) erred in confirming the disallowance of interest of Rs.6,168,000/- and holding that appellant has not filed any satisfactory documentary evidence to establish that the loans under consideration were NPAs.*

Your appellant submits that the learned CIT(A) failed to appreciate and consider that

(a) Your appellant being a NBFC (Non-Banking Financial Company) it has to follow the Reserve Bank's guidelines on prudential norms, income recognition, classification of assets etc.

(b) Your appellant therefore submits that to comply with the Guidelines as aforesaid it was precluded from provisioning any interest on such principle sums which are considered Non-performing Assets (NPA).

(c) Your appellant further submits that NPA status of a loan is based on regulatory framework as per RBI norms and no documentary evidence is necessary to establish the same.

1.2 *Your appellant therefore submits that as per facts and law on the subject matter the disallowance confirmed by learned CIT(A) is not in order.”*

2. At the outset the learned A.R. submitted before the Bench that both the issues raised in the current appeals are fully covered in favour of the assessee in assessee's own case in ITA Nos. 3845 & 4179/Mum/2014 for A.Y. 2009-10 vide order dated 21.10.2016. The learned A.R. prayed before the Bench that the issues involved in the current appeal may also be

decided by following the above mentioned order of the Coordinate Bench.

3. The learned D.R. fairly agreed to the contention and argument of the learned A.R.

4. We heard the rival submissions and perused the material on record. From a perusal of the order of the Coordinate Bench we find that the facts in both the issues before us are identical as decided in favour of the assessee by the Coordinate Bench of the Tribunal in ITA Nos. 3845 & 4179/Mum/2014 for A.Y. 2009-10 in assessee's own case.

5. As regards the issue of confirmation of disallowance of ₹4,18,22,471/- out of administrative expenses we find that the Coordinate Bench has decided similar issue in paras 7 to 9 of the order in ITA Nos. 3845 & 4179/Mum/2014, which is reproduced as under: -

"7. We have considered rival contentions and found from record that total administrative expenses incurred by the group company amounts to 22.02 crores. The assessee has debited total administrative expenditure of 4.79 crores. The assessee has recovered administrative expenses from the group company amounting to 45.91 lakhs. Thus, net administrative expenses works out to be 27.27 crores, 1/6th of such expenditure incurred by the assessee and its group company works out to be 4.54 crores. From the record we found that the AO had wrongly disallowed 7/8th of the administrative expenses considering that the said expenses are incurred for the other 7 group companies mentioned in the order. The 7 group companies have their own business set up and functions independently, are separately assessed under the Income Tax Act and do not have any common business interest with the assessee. We found that expenses incurred for and on behalf of such companies aggregating to Rs.45,91,976/- have been recovered from the said group companies. A statement showing the said recovery with a brief rationale was submitted before the lower authorities. This shows that no part of the group companies expenses are included in the Profit & Loss account of the company which the learned DCIT has wrongly noted.

8. We had also verified the break-up of the expenses included in the Administrative Expenses are fixed overheads in nature and irrespective of the volume / turnover of the company; it has to be incurred and cannot be reduced immediately. The Administrative expense are incurred based on the set up of the business and

commercial expediency in the context of type of activity, business profile of the company and the volume of turnover / activity. We also found that during the year under consideration expenses have been reduced by 7% as compared to the expenditure of last year. Moreover, company's total income for the AY 2009-10 was Rs.2.89 crores as per Profit and Loss Account which is more or less same as per last year.

9. *In view of the above, we do not find any justification for the disallowance so made by the AO."*

6. From a perusal of the above paras it is quite apparent that identical issue has been decided in A.Y. 2009-10 by the Coordinate Bench and we respectfully following the same, in order to maintain consistency with earlier year, delete the disallowance of ₹4,18,22,471/-. Ground raised by the assessee is allowed.

7. As regards the second issue of confirmation of disallowance on account of interest amounting to ₹61,68,000/- by the CIT(A) we find that identical issue has been decided by the Coordinate Bench vide para 18 of the above cited order, which is reproduced below: -

"18. From the record we found that AO had disallowed interest attributable to funds given free of interest or given on interest but no interest on such advances were accounted for in the books of accounts. It was contention of learned AR that even recovery of the principle advance was doubtful, therefore, interest income has not been accounted for all such advances and for this purpose reliance was placed on the decision of Delhi High Court in case of Vasisth Chay Vyapar Ltd, 330 ITR 440. It was also contention of learned AR that assessee was having sufficient interest free funds which were advanced in earlier years on which no disallowance was made. We have considered the rival contention and found that for not providing interest income on advances, no material was brought on record by assessee to substantiate that even principle amount is in doubt. In the interest of justice, we restore this issue back to the file of the AO to find interest free funds available with the assessee which has been used for giving interest free advances. Assessee is also directed to place on record the position of borrower so as to find out if the principle loan itself is in doubt, so as to justify assessee's claim of not accounting of interest on such advances. We direct accordingly. AO is to decide the matter afresh after considering all the documents discussed herein above and applying the judicial pronouncements as discussed above to the facts of instant case."

8. The fact of the ground raised by the assessee is identical to one as decided by the coordinate bench supra. Respectfully following the order of

the Coordinate Bench in assessee's own case for A.Y. 2009-10 we restore this issue to the file of the AO to decide the same afresh after considering all the documents and applying the judicial pronouncements as has been discussed by the Coordinate Bench. Thus, this ground is allowed for statistical purposes.

9. In ITA No. 3691/Mum/2015 the assessee has raised two identical issues; (i) confirmation of disallowance of ₹3,27,25,000/- out of administrative expenses by the CIT(A) and (ii) disallowance of interest amounting to ₹2,39,66,925/-. These issues have been decided by us in ITA No. 3690/Mum/2015 for A.Y. 2010-11 (supra) and these findings would, mutatis mutandis, apply to this appeal as well. Accordingly the disallowance of ₹3,27,25,000/- out of administrative expenses is deleted and the issue of disallowance of interest of ₹2,39,66,925/- is restored to the file of the AO for fresh adjudication on the basis of the decision of the Coordinate Bench in assessee's own case for A.Y. 2009-10.

10. In the result, the appeals filed by the assessee are allowed as discussed above.

Order pronounced in the open court on 24th January, 2018.

Sd/-
(Saktijit Dey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Mumbai, Dated: 24th January, 2018

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -10, Mumbai
4. The CIT - 5, Mumbai
5. The DR, "B" Bench, ITAT, Mumbai

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.