

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'A'**

**BEFORE SHRI N.V VASUDEVAN, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.2671 /Bang/2017
(Asst. Year – 2012-13)

The Asst. Commissioner of Income-tax,
Central Circle- 2(3),
Bengaluru.

. Appellant

Vs.

M/s. Kemfin Services Pvt., Ltd.,
No.11, Kemwell House,
Tumkur Road,
Bengaluru – 560022.
PAN: AAACK6926E

.Respondent

Appellant by : Shri B.R. Ramesh, JCIT
Respondent by : None

Date of Hearing : 09-04-2018
Date of Pronouncement : 11-04-2018

ORDER

PER SHRI N.V VASUDEVAN, JUDICIAL MEMBER :

This is an appeal by the revenue against the order dated 31/8/2017 of Commissioner of Income-tax (Appeals) - IV Bangalore relating to assessment year 2012-13.

2. The grounds of appeal raised by the revenue reads as follows:-

“1. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 1,18,09,527 which was made on account of charging of interest @4% on advances given to associate

concern which were given out of interest bearing unsecured loans obtained on much higher rate ie. 10%?

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) failed to appreciate that the assessee has not been able to prove with evidences that there was commercial expediency involved in the transactions with the sister concern?

3. Any other grounds which may be added later on”.

3. The assessee is a company engaged in the business of making investments in securities. In the course of assessment proceedings for AY 2012-13, the AO noticed that the assessee had paid interest on funds borrowed by it @ 10% p.a. The AO also noticed that the assessee had given loan to M/s Kemwell Biopharma Pvt. Ltd., and M/s Kemwell Pvt. Ltd., and charged interest on those loans @ 4% per annum. In the order of Assessment the AO has observed that the companies to whom loans had been given by the Assessee were related parties. The AO has not spelt out as to what is the relationship whether as holding or subsidiary company or because of common shareholders or directors etc. The AO was of the view that the assessee ought to have charged @ 10% on the loan given to to M/s Kemwell Biopharma Pvt. Ltd., and M/s Kemwell Pvt. Ltd., i.e., the same rate of interest at which it paid interest on its borrowings. The AO added the difference between 10% rate of interest on the loans given to related parties and 4% interest which was interest charged by the assessee on the loan given to the related party. The computation made by the AO was as follows:-

Interest received at 4% pa from M/s Kemwell Pvt Ltd. & M/s. Kemwell Biopharma Pvt. Ltd.	Rs. 78,73,031
Interest at 10%	Rs. 1,96,82,578
Difference	Rs. 1,18,09,527

4. Aggrieved by the addition made by the AO, assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee submitted that loans given to M/s Kemwell Biopharma Pvt. Ltd., and M/s Kemwell Pvt. Ltd. were from and out of the assessee's own surplus funds and no borrowed funds on which interest was paid was used for the purpose of giving loan to the related parties. The assessee pointed out that there was no provision in the Income Tax Act, 1961 (Act) on the basis of which notional income can be brought to tax by the AO. The assessee also explained the commercial prudence in giving the loans to sister companies. The CIT(A) found force in the argument of the assessee and he held that the AO has not made out a case of diversion of borrowed funds on which interest was paid for the purpose of giving loan to the related concerns. He also held that the assessee had given loans to the related party owing to commercial expediency. The addition made by the AO was deleted by the CIT(A).

5. Aggrieved by the order of the CIT(A), Revenue has preferred present appeal before the Tribunal.

6. Notice of hearing was served on the assessee. But none appeared on behalf of the assessee. We, therefore, proceed to decide the appeal after hearing the submission of the ld DR. The ld DR relied on the order of the AO.

7. We have perused the order of the AO. In the order of the AO, the assessee has specifically put forth his objections before the AO which is to the effect that the funds given to the related parties were out of its surplus funds which were lying idle. Besides the above submission, the assessee has also highlighted the commercial expediency of giving loans to the related party. It is not the case of the AO that addition has to be made in terms of sec. 40A(2)(b) of the Act. The AO has not given any finding with regard to the loan not having been given out of

assessee's surplus funds lying idle. In the absence of such a clear finding, we are of the view that the action of the AO in making the addition was without any basis. The finding of the CIT(A) that there was no diversion of borrowed funds for non business purpose has not been disputed by the Revenue before us. In these circumstances, we are of the view that there is no merit in this appeal by the Revenue. Accordingly, the appeal by the Revenue is dismissed.

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

Order pronounced in the open court on 11 **April, 2018**.

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Sd/-
(N.V VASUDEVAN)
JUDICIAL MEMBER

Bangalore
Dated : 11/4/2018
Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Sr. Private Secretary, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr. P. S.....
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.