

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

**[Before Sri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 2027/Kol/2017**

Assessment Year: 2012-13

***Baba Satyanarayan Himghar P. Ltd.....Appellant***

***C/o. S.N. Ghosh & Associates, Advocates***

***Seben Brothers' Lodge***

***P.O. Buroshibtala***

***Chinsurah***

***Dist. Hooghly***

***PIN - 712 105***

***[PAN : AACFB 7882 M]***

***ACIT, Circle-23, Hooghly.....Respondent***

***Aaykar Bhawan Hooghly***

***G.T. Road, Khadina More***

***P.O. Chinsurah***

***P.S. Chinsurah***

***Dist. Hooghly***

***Pin - 712 1010***

**Appearances by:**

*Shri Somnath Ghosh, Advocate, appeared on behalf of the assessee.*

*Shri Ranu Biswas, DR, appearing on behalf of the Revenue*

Date of concluding the hearing : April 18<sup>th</sup>, 2018

Date of pronouncing the order : May 4<sup>th</sup>, 2018

**O R D E R**

**Per J. Sudhakar Reddy :-**

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-11, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 22/09/2017, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2012-13.

2. The assessee is a Private Limited Company and is in the business of cold storage and trading in potatoes. The issue that arises for my adjudication is whether the disallowance made by the Assessing Officer of an amount of Rs.5,64,480/-, being interest claimed u/s 36(1)(iii) of the Act is correct as the facts and circumstances of the case.

2.1. The assessee had taken loan from Allahabad Bank and paid interest @ 8.82% amounting to Rs.38,35,069/-. The assessee had invested an amount of Rs.64,00,000/- as share application money in a company M/s. Bhaktimoyee Cold

Storage Pvt. Ltd. The Assessing Officer was of the view that the loan taken from Allahabad Bank was diverted for making investment by way of share application money in M/s. Bhaktimoyee Cold Storage Pvt. Ltd. and as such investment is not related in any way to the business activity of the assessee company, interest expenditure attributable to such investment was to be disallowed.

2.1.1. Before the Id. First Appellate Authority, the assessee pleaded that the investment was made as M/s. Bhaktimoyee Cold Storage Pvt. Ltd. was located adjacent to the assessee's business concern and was in the same line of business and it was prudent to make such investment. It was further submitted that there were competitors to the assessee company and with an intention of acquiring controlling interest, the assessee had applied for shares in that company. These pleadings were not rejected by the Id. CIT(A). The Id. CIT(A) upheld the finding of the Assessing Officer by invoking proviso to Section 36(1)(iii) introduced by the Finance Act, 2003, *w.e.f. 01/4/2004*. He also observed that the assessee had not given pertinent details like financial details of M/s. Bhaktimoyee Cold Storage Pvt. Ltd. and the specific benefits/revenues that accrued to the assessee or that were likely to accrue to the assessee on this investment.

3. Aggrieved the assessee is before us.

4. After hearing rival contentions I find that the Id. CIT(A) based his order on the proviso to Section 36(1)(iii) of the Act. The undisputed fact is that the investment was made for the purpose of business. The proviso to Section 36(1)(iii) of the Act, as applicable to the impugned Assessment Year reads as follows:-

*"(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession :-*

*Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.*

4.1. This proviso was inserted *w.e.f. 01/04/2004*. For the impugned Assessment Year, the wording that is crucial "acquisition of an asset for the extension of existing business or profession". This was omitted by the Finance Act, 2015. Various Courts and Authorities have interpreted this term. In the case of *M/s. Eicher Motors Ltd. vs.*

DCIT, in ITA No. 207/Del/2013; Assessment Year 2007-08 & other appeals, order dt. 12<sup>th</sup> December, at para 9.4., it was held as follows:-

*"9.4. We have carefully considered the submissions of the assessee and the Revenue and perused the material available on record. The assessee being a promoter of Eicher Limited and with a view to acquire full control over of the said company, decided to acquire the shares of Eicher Limited from public shareholders and to delist the same from Stock Exchanges. Apparently, the acquisition of shares in its subsidiary company [Eicher Limited] was to strengthen its controlling interest in that company in furtherance of its business only. Accordingly, the expenditure incurred in relation thereto would be regarded for having incurred for the purposes of its business which is allowable as a deduction u/s 37(1) of the Act. We have also perused the case laws on which the assessee had placed strong reliance. The ratio laid down by various judiciaries is that interest expenditure incurred on borrowed funds utilized for acquiring controlling interest in companies would be allowable business deduction since the acquisition of controlling interest in a company is in furtherance of the business purposes of the assessee. To illustrate further, the judgments rendered by various judiciary in the context of allow ability of claim of interest u/s 36(1)(iii) would equally be applicable to the claim of deduction u/s 37(1) of the Act in as much as the conditions precedent for deduction under the both the provisions is same, namely, an expenditure must have been incurred for the purposes of business."*

5. The Hon'ble Delhi High Court in the case of *CIT vs. Tulip Star Hotels Ltd. [2011] 338 ITR 482 (Delhi)*, has held as follows:-

*"...the assessee was in the business of owning, running and managing hotels. For the effective control of new hotels acquired by the assessee under its management it had invested in a wholly owned subsidiary company. The expenditure incurred was expenditure incurred for business purposes and was thus allowable under section 36 of the Income-Tax Act, 1961."*

5.1. Similar is the decision of the jurisdiction High Court in the case of *Caldern Pharmaceuticals Ltd. vs. CIT [2004] 265 ITR 243*.

6. Respectfully following the propositions laid down in these case-law and applying the same to the facts of the case, and as the assessee has acquired these shares to gain controlling interest in a competitor company. I am of the considered opinion that the disallowance made is bad in law. Accordingly I delete the disallowance made by the Assessing Officer as affirmed by the Id. CIT(A) and direct the Assessing Officer to allow the claim of the assessee u/s 36(1)(iii) of the Act.

7. In the result, appeal of the assessee is allowed.

***Kolkata, the 4<sup>th</sup> day of May, 2018.***

***Sd/-***

**[J. Sudhakar Reddy]**  
 Accountant Member

Dated: 04.05.2018  
 {SC SPS}

*Copy of the order forwarded to:*

**1. Baba Satyanarayan Himghar P. Ltd  
C/o. S.N. Ghosh & Associates, Advocates  
Seben Brothers' Lodge  
P.O. Buroshibtala  
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Dist. Hooghly  
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3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary  
Head of Office/ D.D.O. ITAT, Kolkata Benches