

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI C.N PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.5946/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2008-09)

Ion Exchange (India) Ltd, Ion House, 4 th floor, Dr. E Moses Road, Mahalakshmi, Mumbai- 400 011.	बनाम/ v.	DCIT 6(3)(1) Room no. 563, 5 th floor, Aayakar Bhavan, Mumbai-400020
स्थायी लेखा सं./ PAN : AAACI1726L		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Shri PRV Raghvan
Revenue by :		Shri Rajat Mittal (DR)

सुनवाई की तारीख /**Date of Hearing** : 03.05.2018

घोषणा की तारीख /**Date of Pronouncement** : 09.05.2018

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 5946/Mum/2016 , is directed against appellate order dated 22.07.2016 passed by learned Commissioner of Income Tax (Appeals)-12, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2008-09, appellate proceedings had arisen before learned CIT(A) from assessment order dated 19-03-2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s. 254 of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2008-09.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"1. Addition on account of interest free advances to group companies Rs.2,38,580/-

a. The Hon'ble Commissioner of Income-tax (Appeals) 12, Mumbai (the learned CIT(A)) has erred in law and on facts in upholding, vide paragraph 8 at page 5 of her Order, the disallowance of Rs.2,38,580/- incurred on interest on funds borrowed by it, which do not appear to have been deployed for the purposes of their business but utilised for interest free advances to your appellants group companies and subsidiaries.

b. The Hon'ble CIT(A) has erred in law and on facts, vide paragraph 8 at page 5 of her Order, in stating that "..... The appellant has not made any new evidence to substantiate that the advances were given out of interest free fund and also not proved the commercial expediency before me. Hence, the appellant's submission, only on the ground of judicial reference, cannot be accepted without any explanation / evidence on the facts of the case. Accordingly, by being consistent with the decision in the applicant's own case earlier, by respectfully following predecessor CIT(A), this ground is dismissed.

c. The Hon'ble Commissioner of Income-tax (Appeals) 12, Mumbai (the learned CIT(A)) has erred in law and on facts in not granting this ground when on the same footing she had granted your appellants grounds of appeal on disallowance u/s 14A in para 7 of her same Appellate order.

2. Addition on account of interest expenditure on investments - Rs.19,63,590/-

a. The Hon'ble Commissioner of Income-tax (Appeals) 12, Mumbai (the learned CIT(A)) has erred in law and on facts in upholding, vide paragraph 9 at page 5 & 6 of her Order, the disallowance of Rs.19,63,590/- incurred on interest expenditure on investments.

b. The Hon'ble Commissioner of Income-tax (Appeals) 12, Mumbai (the learned CIT(A)) has erred in law and on facts in stating that your Appellants' letters dated 11.09.2014 and 18.02.2015 were not submitted before her. The factual position is the same are part and parcel of the Appeal Documents having numbered as Exhibit 11 and 12.

c. The Hon'ble Commissioner of Income-tax (Appeals) 12, Mumbai (the learned CIT(A)) has erred in law and on facts, at para 9 on page 6 of her Appellate Order, in stating that " ...It is also not clear as to whether it was argued / explained before the AO or not. Hence, such argument cannot be relied on and accordingly I am respectfully following the order passed by my predecessor in earlier year. There, the ground of appeal no. 3 is dismissed."

d. The Hon'ble Commissioner of Income-tax (Appeals) 12, Mumbai (the learned CIT(A)) has erred in law and on facts in not granting this ground when on the same footing she had granted your appellants grounds of appeal on disallowance u/s 14A in para 7 of her same Appellate order.

3. Relief / Prayer: - In view of the aforestated factual and legal position, we humbly request Your Honours to -

a. delete the above mentioned disallowances made by the ITO and confirmed by the CIT(A) in her Appellate Order dated July 22, 2016; and

b. any other relief as Your Honours may deem fit and appropriate, may please be granted.

Your Appellants crave, leave to add, to amend, to alter, to substitute, to modify and / or to withdraw any or all of the foregoing grounds of appeal on or before the time of hearing.”

3. Effectively there are two grounds raised by the assessee which are concerning disallowance of interest expenditure with respect to the amounts advanced free of interest /investments made by the assessee in its subsidiary companies. Thus, primarily Revenue has disallowed interest expenditure on the ground that interest bearing funds have been used for making interest free advances / investments with group companies. This is second round of litigation before the tribunal. In the first round , the tribunal set aside and restored the issues to the file of the AO for de-novo adjudication of the issues vide orders in ITA no. 5109/Mum/2013 dated 10.02.2014. The AO in second round of litigation vide assessment order dated 19.03.2015 passed u/s 143(3) r.w.s. 254 of the 1961 Act confirmed the said additions again , which were later confirmed by learned CIT(A) vide appellate orders dated 22-07-2016 in second round of litigation. Now being aggrieved by learned CIT(A) appellate orders dated 22-07-2016, the assessee has filed this appeal with the tribunal in second round of litigation.

4. The brief facts are that the assessee company is engaged in the business of manufacturing , trading and sale of water treatment plants, chemicals and related consumer products.

5. The assessee had advanced Rs. 79 lakh to its subsidiary company namely M/s Ion Exchange Enviro Farms Ltd as an interest free advance . There is no movement of funds during the year under consideration so far as interest-free advances of Rs. 79 lacs to this subsidiary company is concerned as the same was advanced in earlier years. The assessee had claimed that

the said amount was advanced free of interest owing to commercial expediency.

The assessee has also made investments of Rs. 6,50,19,545/- in various subsidiary companies in which it had controlling interest .

The assessee invoked commercial expediency in advancing interest free advances to the tune of Rs. 79 lacs as well making investments in these subsidiary companies to the tune of Rs.650.19 lacs to acquire their controlling interest. The assessee relied upon decision of Hon'ble Supreme Court in the case of S A Bulders v. CIT 288 ITR 1(SC). But the AO was of the view that there is diversion of interest bearing funds for making interest free advances/investments in subsidiaries companies and the assessee could not prove commercial nexus or commercial expediency in advancing aforesaid interest free advances/making investments in the subsidiary companies. Since, there were interest bearing borrowings which were made by the assessee , it led to disallowance of interest expenditure on the grounds that mixed pool of funds were used for making interest free advances/investments in subsidiary companies, thus disallowance of interest expenditure stood to the tune of Rs.2,38,580/- for interest free advances of Rs. 79 lacs made and disallowance of interest expenditure stood to the tune of Rs.19,63,590/- for making investments to the tune of Rs. 650.19 lacs in its subsidiary companies . This disallowance was upheld by learned CIT(A). The tribunal in first round set aside to the file of the AO for fresh adjudication but the same position continued even in second round of litigation both before the AO as well learned CIT(A) and that's how the matter is before the Bench in second round of litigation.

6. The Ld. Counsel for the assessee at the outset drew our attention to the Balance Sheet of the assessee which is placed in paper book filed with the tribunal from page no. 163 to 229. Our attention was drawn to page no. 195/pb and it was stated that assessee's own capital inclusive of share capital and reserves and surplus, as on 31st March 2007 was to the tune of Rs. 114.10 crores which stood increased to Rs. 126.86 crores as at 31-03-2008. It was submitted that the assessee's total investment as per audited Balance Sheet was Rs. 6.41 crores as at 31.03.2007 which increased to Rs.

9.17 crores as at 31.03.2008. It was submitted that there is an increase in investments in subsidiary companies from Rs. 4.67 crores as at 31-03-2007 to Rs. 6.50 crores as at 31-03-2008 which was mainly due to removal of provisions for diminution in the value of investment which was earlier provided to the tune of Rs. 177.06 lakh in the financial year 2006-07 . Our attention was drawn to page no. 200/pb wherein Schedule no. 5 – Investments is placed . It was submitted that the assessee has given interest free advances to the tune of Rs. 79 lacs to its subsidiary company M/s Ion Exchange Enviro Farms Ltd due to commercial expediency which was given in earlier years and there was no advances made during the year. In any case , it was submitted that perusal of the audited Balance Sheet will reveal that the assessee’s own capital inclusive of share capital and reserves were to the tune of Rs. 126.86 crores as at 31-03-2008 , which were more than the interest free advances to the tune of Rs. 79 lacs and investments made in subsidiary companies to the tune of Rs. 660.19 lacs and presumption will apply that assessee had invested its own funds towards these interest free advances and investments in subsidiary companies and no disallowance of interest is warranted. The assessee relied upon decision of Hon’ble Bombay High Court in the case of CIT v. Reliance Utilities and Power Limited (2009) 313 ITR 340(Bom.) and decision of Hon’ble Bombay High Court in HDFC Bank Limited v. DCIT (2016) 383 ITR 529(Bom.). It was submitted that the Revenue has not come in appeal against the appellate order of learned CIT(A) for AY 2007-08. It was submitted that there is an increase in fixed assets from Rs. 49.37 crores as at 31-03-2011 to Rs. 65.14 crores as at 31-03-2012 and borrowings were used towards investments in fixed assets.It was submitted that total loan fund which stood at Rs. 56.75 crores as at 31-03-2007 stood increased to Rs. 74.80 crores as at 31-03-2008. Our attention was drawn to schedule of loan funds to show mainly all the loans are tied up towards working capital, packing credit for exports , vehicle loans , term loans and none of the loans were raised for making investments in subsidiary companies or for advancing money to these subsidiary companies. Our attention was drawn to the cash flow statement which is placed in paper book/page 228 to reflect that the assessee had earned net profits from operating activities. . The learned DR on the other hand relied upon the orders of the authorities below and it was submitted that no appeal was filed with ITAT for AY 2007-08 due to low tax effect.

7. We have considered rival contentions of both the parties and perused the material on record including case laws relied upon. We have observed that assessee is engaged in the business of manufacturing , trading and sale of water treatment plants, chemicals and related consumer products . We have observed that this is second round of litigation. The main controversy is w.r.t. disallowance by Revenue of interest expenses incurred by the assessee on the allegation that the assessee has raised interest bearing loans/deposits and the assessee has advanced Rs. 79 lacs to its subsidiary company as interest free loans and advances , while Rs. 650.19 lacs stood invested in subsidiary companies to acquire controlling stake. The main bone of contention of Revenue is that there common/mixed pool of funds wherein the assessee is paying interest expenses on interest bearing loans raised by the assessee while the assessee has advanced interest free funds as an advance/investment in its subsidiary companies. Perusal of the audited financial statements which is placed in paper book and facts emerging from records reveal that the assessee has neither advanced the said sum of money to the tune of Rs. 79 lacs to its subsidiary company during the year nor any major fresh investments in subsidiary companies were made during the year. The increased investment as is reflected in audited Balance Sheet in subsidiary companies as at 31-03-2008 vis-a-vis 31-03-2007 is mainly on account of write back of provisions to the tune of Rs. 177.06 lacs created in earlier years towards diminution in the value of investments. There is no specific finding of fact recorded by the authorities below that interest bearing funds were specifically raised and utilised towards granting interest free loans to subsidiary company or for making investments in subsidiary company for acquiring controlling interest. Perused of the audited Balance Sheet of the assessee company reveals that the owned funds consisting of share capital and reserve/surplus of the assessee company are to the tune of Rs. 126.86 crores as at 31-03-2008 which was Rs.114.10 crores as at 31-03-2007, while the total interest free advances made by the assessee to its subsidiary company stood at Rs. 79 lacs and investments in subsidiary company stood at Rs. 6.50 crore as at 31.03.2008, aggregating to Rs. 7.29 crores which is a minor amount vis-a-vis owned funds being even less than 10%. The revenue has not brought on record any material to show that any specific interest bearing loans were

raised by the assessee specifically for making advances to subsidiary company/making investments in the subsidiary companies. The owned funds are to the tune of Rs. 126.86 crores as at 31-03-2008 and Rs. 114.10 crores as at 31-03-2007 which are substantially higher than the aggregate of interest free advances/investments in subsidiary companies which cumulatively stood at Rs. 7.29 crores as at 31-03-2008. There are no fresh advances/investments in subsidiary companies except minor amount of Rs. 6.10 lacs invested in subsidiary companies during financial year 2007-08 , while major enhancement to the tune of Rs. 177.06 lacs as is reflected in investment in subsidiary companies as at 31-03-2008 vis-a-vis 31-03-2007 was due to reversal of provisions to the tune of Rs. 177.06 lacs created in preceding year towards diminution in the value of investments. Thus, the advances/investments in subsidiary companies to the tune of Rs. 7.29 crores is a minor investment (less than 10%) vis-a-vis owned funds to the tune of Rs.126.86 crores. Under these circumstances and factual matrix of the case as is detailed in extenso above, presumption shall apply that the assessee has invested its own interest free funds towards advancing money to its subsidiary company to the tune of Rs. 79 lacs as well for making investments in subsidiary companies to the tune of Rs. 6.50 crores and no disallowance of interest expenses are warranted. The Revenue is not able to rebut the said presumption as no incriminating material is brought on record to evidence that interest bearing funds are used for making such advances/investments in subsidiary companies. Ratio of decision of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Limited(Supra) and HDFC Bank Limited(supra) shall apply and there shall be presumption that the assessee invested its own funds for making interest free advances to the tune of Rs. 79 lacs in its subsidiary company and for making investments to the tune of Rs. 6.50 crores in its subsidiary companies to acquire controlling interest. It is pertinent to view that similar view was taken by Hon'ble Gujarat High Court in the case of Pr. CIT v. Sintex Industries Limited reported in (2017) 82 taxmann.com 171(Guj) in the context of disallowance u/s 14A and SLP filed by Revenue with Hon'ble Supreme Court stood dismissed in Pr. CIT v. Sintex Industries Limited, SLP(Civil)(Diary) No. 39602 of 2017 vide orders dated 23-03-2018 reported in (2018) 93 taxmann.com 24(SC). Thus, additions made by the AO and as

sustained by learned CIT(A) w.r.t. interest expenses stood deleted . The assessee succeeds in this appeal. We order accordingly.

8. In the result, the appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on 09.05.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 09.05.2018 को की गई ।

Sd/-

(C.N PRASAD)
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 09 .05.2018

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI